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Senate

The Senate met at 12 noon and was called to order by the Honorable NORM COLEMAN, a Senator from the State of Minnesota.

The PRESIDING OFFICER. Today's prayer will be offered by our guest Chaplain, Rev. Dr. Ruben Diaz, of the Bronx, NY.

PRAYER

The guest Chaplain offered the following prayer:

Let us pray.

Heavenly Father, Creator of the heavens and the earth, God of our beloved Nation. The men and women of the United States Senate come before You today to ask that You bless this legislative body with Your wisdom, and guidance.

We ask that You keep its Members in Your holy presence. Psalms 105 says that ''Your word is a lamp to our feet, and light to our path.'' We ask that You light our path especially during the difficult and challenging times of our Nation.

Oh God, we seek Your vision and we want to do Your will that is pleasing to You, and right for our country. We want our decisions to be unified, in step with justice, righteousness, and that which best serve the people of this Nation.

Father, we thank You for allowing us the honor and privilege of living in this great Nation, where our rights and freedoms are protected as ''one Nation under God,'' with a government ''of the people, by the people, and for the people.'' We thank You for allowing us the opportunity to serve.

We humble ourselves, and ask that You bless this Senate, its distinguished Members, and all those who work to insure that America continues to be a great Nation in Your eyes and the eyes of the world.

We praise and bless Your Holy Name. In Your Holy Name, we ask, amen.

PLEDGE OF ALLEGIANCE

The Honorable NORM COLEMAN led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 27, 2003.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable NORM COLEMAN, a Senator from the State of Minnesota, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. COLEMAN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

WELCOMING THE GUEST CHAPLAIN

Mr. FRIST. Mr. President, I welcome our guest Chaplain today and the many people who have accompanied him from his home community. It gives great meaning, as we all know, to listen to and to rely upon the words as expressed so meaningfully and so aptly by our guest Chaplain today.

I yield the floor to the distinguished Senator from New York to also welcome our guest Chaplain.

The ACTING PRESIDENT pro tempore. The Senator from New York.

Mr. SCHUMER. Mr. President, first, let me thank our majority leader for the grace and hospitality he has shown our honored guest today, and all of our guests from the Bronx and the New York area who are present.

We are graced, of course, by God's presence but also by the presence of one of the great leaders in New York, the Reverend Diaz.

Visitors are not allowed to applaud, but we are applauding in our hearts—en nuestros corazones. And we are honored and blessed to have a leader such as Reverend Diaz. He is a leader in both the temporal world—God's world—and our secular world. And he brings the two together in such a beautiful and exquisite way that he is admired from one end of our State to the other.

He has been my friend for a very long time. We are honored that he serves us in our legislature, but we are even more honored that he brings the word of God to all of us here in the Senate as well as in New York. And may he be granted many, many more years of leadership and good health.

Mr. President, I thank the majority leader.

The ACTING PRESIDENT pro tempore. The majority leader.

SCHEDULE

Mr. FRIST. Mr. President, the Senate will spend the day in executive session trying to reach an agreement for a time to vote on the Estrada nomination.

Yesterday, every issue raised by my colleagues on the other side of the aisle was answered by Chairman HATCH and my Republican colleagues in a 2-hour, rapid paced, very responsive question-and-answer colloquy, designed to further clarify the RECORD. We continued the discussion well into the evening. I think we closed the Senate at about 2 o'clock in the morning. That partly explains starting a bit later today.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Mr. President, the Miguel Estrada nomination was submitted by President Bush in May 2001—almost 2 years ago. We know that he has not only the support of the majority party, but he has support from a majority of the Members—more than 51 Senators—in this body. And that was demonstrated in a letter that was sent by Senator MCCONNELL and 51 other colleagues to the President, dated February 25, 2003.

Yet my colleagues on the other side of the aisle continue to practice justice delayed, which, incidentally, is increasingly being called, by the American people, justice denied, because that delay is denying the majority will of this body.

My objective, since February 5—since this nomination came to the floor of the Senate—has been to provide all of our Senators with a forum for informed deliberation, for tempered deliberation, for thorough consideration. I have been very clear from the beginning that my intention was to have a vote—an up-or-down vote—and to move this nomination to the constitutionally mandated question: Will the Senate advise and consent to this nomination—yes or no, yea or nay, up or down? That is all that we ask.

It is the majority leader's job, after consultation with the minority leader, to schedule this yea or nay vote. I have asked, on numerous occasions, for a time certain for this vote. Again and again, each of my requests has been rejected.

The nomination has been pending now for 3 weeks—or more than 3 weeks—and I do believe there has been ample time for Members to deliberate on this nominee. There is no doubt about the outcome if we are allowed to vote on it. The sheer number of signatures on that February 25 letter reflects that the confirmation would occur. Yet Democrats continue to refuse to set a time for this dispositive vote.

So, once again, I say: Let's vote. I hope that Members do come to the floor during today's proceedings to discuss this important nomination.

With respect to rollcall votes—because I know a number of our colleagues are very interested in what the plans will be for both today, tomorrow, and on Monday—I will be discussing the schedule with the Democratic assistant leader or the Democratic leader today in relation to the schedule so that very shortly we can determine when these votes will be scheduled.

The Judiciary Committee is still meeting as we speak. But I hope to have some information here within the next hour or hour and a half so we can set up votes over the next couple days.

The ACTING PRESIDENT pro tempore. The Democratic whip.

Mr. REID. Mr. President, the two leaders have met several times in the last 12 hours. That is fair. And there is progress being made as to what the majority leader is going to do next week. We will be happy to cooperate in any way we can. We have this little dust-up here. We have to work around that.

As I indicated—the leader was not on the floor at the time yesterday—we know we have a problem with the Estrada nomination.

But we are not trying to delay. We have allowed the committees to go forward. We have tried to cooperate with the majority leader anytime he has had other legislation to bring forward. We will continue to do that. We just need to figure out some way to get through the parliamentary problem we have now with the Estrada nomination. We will continue to be advocates for our position in that regard, but we stand ready, as the majority leader has been told by Senator DASCHLE, to work with him in any way we can to help move legislation.

Mr. FRIST. Mr. President, we will continue to work aggressively. I think everybody in this body understands our goal. I appreciate the good nature. We will continue to push forward for a vote. I did have the opportunity to talk to the leader on the other side of the aisle. The Democratic leader and I discussed plans over the next several weeks. That discussion is very important. I believe we are making progress there. Again, in terms of votes, either later today or tomorrow morning, hopefully within an hour or hour and a half, we can make decisions. In all likelihood, we will be voting Monday afternoon and throughout Tuesday.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF MIGUEL ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session and resume consideration of Executive Calendar No. 21, which the clerk will report.

The assistant legislative clerk read the nomination of Miguel Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey.

Mr. CORZINE. Mr. President, for the past several weeks, as we have heard this morning, this body has done very little beyond the debate on the nomination of Miguel Estrada. Hour upon hour, day upon day, week upon week, the debate has continued. We have heard every argument there is to make on both sides of the issue. We have heard them from just about every Senator, and we have heard them over and over. It has been pretty repetitious.

I don't mean to diminish the importance of this debate about a single, very important job. After all, it goes to the heart of the Senate's role under the constitutional system of government. The question is whether this constitutionally responsible body will be diminished to such an extent that we just become a rubberstamp for White House judicial nominations; that is, whether we will agree to automatically confirm nominees even if they refuse to answer publicly the most basic of our questions on their jurisprudential perspectives. It is hard to understand how we can give a lifetime appointment to a job without having a job interview.

This is an important debate. All of us believe that. That is why we have had 3 weeks of consideration. It is one that reaches well beyond the specifics of the individual candidate. It deserves our careful consideration. The Constitution charges the Senate with the responsibility to provide advice and consent on judicial nominations. Those of us on this side will attend to that responsibility.

Of all the issues facing our Nation at this most challenging time in our history, there are other—certainly in my view and I suspect the view of most of my colleagues—issues that are of a higher priority. It is a profound mistake on the part of the majority to insist on staying on this nomination indefinitely while Mr. Estrada and the administration, with all due respect, continue what some would term ''stonewalling'' while there are so many vital issues our Congress should be addressing.

THE ECONOMY

Today, I will focus in particular on the problem, along with the drastic, dramatic threat of terrorism we face daily and the prospect of war with Iraq, which we heard the President talked about last evening, that is probably uppermost in the minds of my constituents in New Jersey and, I suspect, across the country, and that is the state of our economy. It is in serious need of attention.

I have been listening to New Jerseyans from around the State, from all walks of life, all ethnic, religious, racial backgrounds, the long-term unemployed, to manual laborers, to mid-level managers, to CEOs, to retirees and soccer moms. For just about all of them, there is a tremendous sense of anxiety with respect to the state of our economy and their families' economic security. People are concerned about whether they will have a job, whether their savings will be there when they retire, whether they will be able to pay for their college educations, whether they will be able to have health care. There are serious concerns, flat-out kitchen table concerns for all Americans. I know that is the case in my home State.

An anecdotal perspective on this country's anxiousness has now been backed up by hard statistics from the conference board released this week.

Sometimes we divorce these statistics from the reality. I certainly see it in people's faces and the words, but we saw it actually monitored in a statistic released by the conference board this week. We saw consumer confidence drop from 78, almost 79 percent, of the population last month to 64 percent. That is the lowest level since October of 1993. That is probably one of the sharpest drops in history; I did not check the actual number, but far greater than post-September 11, and it is reflective of a dramatic undermining of the strength of well-being felt by most Americans.

Americans around the country are deeply concerned about our Nation's economy. They have a good reason to be. After all, since January 2001, the number of unemployed has increased by nearly 40 percent—almost 8.5 million people. About 2.5 million private sector jobs have been lost in that period, and there are now about 2.5 job seekers for every job opening in America. Think about that, 2.5 people applying for every job now available.

Not only have the number of unemployed Americans increased, those out of work are now jobless for longer periods of time. Over the past year, the average number of weeks individuals have spent unsuccessfully seeking work has increased by about a month, and 20 percent of the unemployed have been looking for work more than 6 months. There are 1 million of these long-term unemployed workers in America and almost 100,000 falling off the rolls for unemployment insurance benefits each month. Just slightly fewer than 100,000 each month are dropping off the benefits because they can't find jobs.

While there are no great and solid statistics on it, there are a lot of people dropping out of the job market. The job market is not growing, and it is one of the reasons—the statistics show the unemployment rate certainly up dramatically and skyrocketing—a lot of people have just stopped looking. The lack of jobs has also slowed wage growth. Recently, only those workers with the very highest of incomes have experienced any wage increases in the economy, any wage increases at least that have outpaced inflation. For lower wage earners, that growth has absolutely stalled to zero. That is not, obviously, helping create the demand that will drive our economy and make a real difference in people's lives.

The Bush administration's record on job creation is on track to be the worst in 58 years. In fact, to just equal what transpired during the Eisenhower administration, which currently has the worst record, you would have to create 96,000 new jobs each month starting today and continuing each month for the remainder of this President's term; 96,000 is a lot of jobs to create, particularly when we have been losing jobs at a rate almost that fast each month.

It is extraordinary what we have to do to turn the economy around. Without a significant increase in job creation, we will have the worst 4-year record in the history of any President.

Unfortunately, there is little evidence to suggest that it will turn around. For instance, according to the employment outlook survey conducted by Manpower, Inc., which came out this week, which is the private sector's best gauge of what is going on in the employment market, only 22 percent of America's employers are going to increase the number of jobs in the upcoming two quarters. The rest of them are either going to reduce jobs or stay the same.

Mr. President, 22 percent is a very low number by any historical measure. I don't understand why we are debating one job on the floor of the Senate when we are failing to address the fundamental needs and requirements for all American families, their jobs, and their well-being.

Of course, the problems with the economy are much deeper than just reflected in what is probably the most important place—the job market. But there is a lack of confidence in a whole host of sectors in the American economy. Our businesses are now operating at only about 75 percent of capacity. That is well below any of the averages we have had historically, which is about 81 percent. Our States are suffering with some of the most severe fiscal crises they faced in decades, forcing Governors and State legislators to approve steep tax increases. In my State, the average increase in property taxes was 7.1 percent. New York City increased property taxes 18.5 percent, and they are trying to put a commuter tax on so everybody who surrounds the city is helping to bail it out with lots of legitimate needs on homeland defense and first responders. We are putting unbelievable pressure on those individuals who are responsible for State and local governments.

In the upcoming fiscal year, estimates of the total State deficits are roughly $90 billion cumulatively. And we are talking about a $36 billion tax cut to be administered this year. That is way overblown by what is happening at our State and local levels.

Briefly, I will mention that investors are in a state of shock. The stock market has declined dramatically in the last 2 years and couple of months, losing almost $5 trillion in value in that period of time. Those are unbelievable numbers, but when you translate that into 401(k)s and IRAs of individuals—at least in my State—I think that is about a 40 percent decline in value, on average. It is a huge loss of the retirement security that many families have seen happen in their financial well-being. When the President's program was announced in early January, actually the Dow Jones Industrial Average was supposed to be benefited by that program, but it dropped by over 10 percent.

Our Federal budget, which 2 years ago was projected to enjoy a 10-year surplus at $5.6 trillion, now looks at record deficits for absolutely years to come—as far as the eye can see, some would say—and will be increasing the public debt over the same horizon as we projected that $5.6 billion surplus to $2 trillion worth of public debt. That is a fiscal reversal in this country of $8 trillion. It is an $8 trillion negative cash swing in the country's cashflow.

I don't want to tell you what I would do if I were back running a company and we had an $8 trillion negative cashflow, but it would probably be grounds for change in policies and programs—maybe even a change in CEOs.

When you add all these concerns together, it is clear that the economic record of the Bush administration is bordering on abject failure. Now the administration's response to the problem is, let's do more of the same. Having based its economic policy on large tax breaks for the most fortunate among us, the President's response to that failed policy is let's stay the course, let's have more tax breaks targeted for those with the highest income, and let's run larger budget deficits and increase our national debt even more, and let's reduce national savings—which is the way we create growth in this country—even more.

Whatever happened to the simple view that I think there has been a bipartisan sense of, which is that rising tides lift all boats? Are we not thinking about the economy in its totality? Why don't we have everybody participating? I don't understand why we are sticking with policies that look to be not serving the country well.

As I have suggested, there used to be a business leader who said, ''If it's broke, fix it.'' It is really nothing more than common sense. If things are not working, I think you have to adjust policies; you have to think about doing something differently if you are stuck in a rut. This administration is doing just the reverse. It has dug itself into a hole, and its response is to dig deeper. If we don't challenge these policies, the long-term implications could reduce our Nation's standard of living not just in the near term but for decades to come.

At a time when we are challenged with domestic security and international security, when we are asking for sacrifice from our men and women in uniform, for all of the country to understand we have serious challenges to our national security, why we are not understanding that this is a time for us to pull together and have shared sacrifice is hard for me to understand.

Frankly, if one projects the cost of the President's tax cut package beyond 10 years—if you put that structure in place while the demographic bubble of the baby boomers comes into play, frankly—I don't care about dynamic scoring—we will end up running, by almost all objective analyses, catastrophic deficits, as Chairman Alan Greenspan testified just this morning at a House hearing on aging. It will be

a real challenge to be able to maintain Social Security and Medicare at anything similar to today's programs for the future seniors of America.

We are putting those programs at risk, we are putting our fiscal position at risk, if we stay the course with the policies we have today. Considering all these facts, unfortunately, it is difficult for the administration to provide effective leadership, in my view, on the economy because its credibility has been badly eroded. There is a tremendous credibility gap, and it results from the repeated use of figures and claims that are just badly misleading in many ways. As a matter of fact, starting to come out are regular analyses by economists, people in the press, and I think one needs to honestly look at and challenge what some of these predictions and analyses point to and compare them with the facts.

Let me provide a few examples. The President's rhetoric would lead one to believe that his tax plan will provide a meaningful economic stimulus, get jobs growing, and it is all about jobs. When you dig into the numbers, it turns out that the reality is very different. In fact, only $36 billion of the President's planned $675 billion on the table would kick in this year—$36 billion in a $10 trillion economy. It is just an absolute drop in the bucket relative to what would be needed to actually drive this economy forward, by anybody's measure, any objective measure of what it takes to get an economy moving.

There is virtually no one in Congress I have been able to find who would argue that this is a program that will stimulate or revitalize this economy, nor does it make sense to argue that the President's dividend exclusion somehow is going to stimulate the economy, when its real effect will be to shift cash off the corporate balance sheet. If corporations are going to invest in jobs and research and development, and if they are going to put money to work in building, plant, and equipment, they need cash. You cannot go to a bank unless you have margin to put down. You need to invest in those things to drive our economy.

By definition, dividend exclusion is going to take money off the balance sheets of companies, and the capacity to invest and retain and create jobs is going to be diminished. That is why there is this argument about whether, if you are going to have a dividend exclusion, you ought to at least do it at the corporate side of the income statement as opposed to through an exclusion.

We have heard that from Chairman Greenspan. We see that from almost any reasonable economic analysis. Cash on the balance sheets is how you get business done, as far as investment and creating jobs. It is almost a truism. Instead of driving economic growth, it is actually antigrowth, and I think we will end up with less economic stimulus by the nature of the structure, even if we thought it was an appropriate time for that reform on something other than a revenue-neutral basis. In other words, the President's claims about the stimulative impact of his proposal, in my view, and I think a vast majority of independent analysts, is little more than rhetoric. The reality is quite different.

There are other elements with which people can deal with regard to the credibility of the proposals of the administration claiming benefits of this tax cut are going to go—I think this is the quote—''92 million Americans receive an average tax cut of $1,083.'' That is the claim.

As we are hearing over and over, that is pretty misleading because the average tax cut is inflated by the huge breaks going to a very narrow set of folks, while a lot of other people are getting very small tax cuts. In fact, a half of all taxpayers would get a tax cut not of $1,083, but less than $100. This is a difference between mean and average, and 78 percent of Americans would get reductions of less than $1,000.

When I went to business school, our required reading included the book ''How to Lie with Statistics.'' There are some spinmeisters who must have reviewed this work and learned it well, as far as I can tell. I am sure Americans understand how averages are put together, and they can cover great sins.

Similarly, the White House likes to claim the amount of income tax paid by high-income Americans would actually rise under this proposal. We hear this under the arguments of class warfare. When you consider the real measure of who benefits in terms of increases in something that is simple for people to understand, aftertax take-home pay—the stuff people can actually buy groceries with or pay the bills with—it turns out that—no surprise—it is the most fortunate who do best under the Bush plan.

The tax reduction for those making $45,000 would amount to less than 1 percent of their aftertax take-home pay. Those making more than $525,000 would see an increase of more than three times that rate, and in real dollars those are substantial numbers. But with the aftertax, what people can actually use in their everyday lives, the opposite is being promoted from what the reality is. Again, there is a credibility gap.

I also argue the credibility gap applies to the administration's claims that their plan will help seniors. In fact, over half of all dividends paid to the elderly go to seniors with incomes over $100,000. I think it is great they planned and saved, but the number of seniors out of the roughly 40 million seniors who have incomes over $100,000 is about 3.5 million. That is where over half of this dividend exclusion benefit would go. By the way, only about a quarter of all seniors would receive any benefit.

To say this is going to somehow vastly improve the position of seniors in America is just a gross overstatement. I wish to revert back to comments I made earlier. The vast majority of seniors depend on Social Security and Medicare as the basis for protecting their economic security and their well-being over a period of time, and we are doing just the opposite of what is necessary to protect Social Security and Medicare in the future years. It is depressing. That is what Chairman Greenspan talked about an hour ago in a hearing of the House Committee on Aging: the risks to Social Security and Medicare if we do not change our economic policies and do something to straighten out our fiscal policies in this country.

Let's consider the administration's claims about how cutting taxes on dividends will benefit millions of Americans. The truth is, only 22 percent of those with incomes under $100,000—this is the vast majority of income-tax-paying Americans—reported any dividends in the year 2000, and the average tax cut from the dividend exclusion for those with modest incomes of between $30,000 and $40,000—by the way, the average income for individuals in America is something close to $40,000—those people are going to get a $29 tax cut associated with this dividend exclusion.

There is a real credibility gap. We are exaggerating and distorting the claims about the power of this tax cut. We are talking in terms that really do not relate to the vast majority of Americans. I think the word is starting to get out. There are serious questions in the minds of Americans that at a time when we have the potential for war offshore, and we certainly have threats of terrorism at home, why are we focusing so much of our benefits of what we are doing with regard to tax proposals on such a narrow segment when the broad economy, that rising tide that would help everyone, is suffering and there is no stimulus going to it?

This is not the only area, by the way, where some of these claims, relative to reality, are setting up a real pattern of a credibility gap for the administration. The Secretary of Defense, on a number of occasions, argued the cost of war in Iraq might be $50 billion to $60 billion, something in that neighborhood. But when the President's top economic adviser last December—maybe it was in November—to his credit suggested this figure was far too low and the actual cost could be as high as $200 billion, what happened? He got fired.

The dissidence between what is talked about in the public relative to what the analysis is by a lot of people who are trying to look at this in a serious-minded way so we understand what our needs are as a nation is troubling to a lot of folks and accentuates this credibility gap.

It is time for the administration to be more forthcoming about the real costs of the impending war. The American people have a right to know. I am glad this week we started to see a little

of that discussion, but even in that context, we need to consider the ongoing costs of rebuilding Iraq in the aftermath of a war, presuming that war goes the way we expect, presuming that it is relatively short in nature.

Even yesterday's estimate of $60 billion to $95 billion that we read about in the papers included only 1 year of reconstruction costs—1 year—when almost every expert I have heard come before the Foreign Relations Committee has talked about a decade, maybe a little bit more, but a very long-term program. By the way, all we have to do is think about Korea. We are still in Korea 53 years after a war on that peninsula.

The administration should play it straight with everyone about the costs we are going to face, just as we ought to play it straight with regard to our budget, with regard to tax cuts. In my view, we need to talk straight so we can build up the trust of the American people and those who watch us around the world. Trust does matter. It is important. That is what we are asking corporate America to do, to clean up its act. That is why we want accounting statements that are true. I think people expect to truly understand what the nature of the current situation is as we go forward.

Actually there is a serious credibility problem that is causing us problems abroad as well. I think whether or not we are believed by some of the populations abroad is reflected in how much opposition we have seen from a lot of countries, not just in their political establishment but by literally millions of people who have shown up, probably most clearly in Great Britain, which has been our strongest supporter with regard to the Iraqi situation. The population is someplace else. Why is it we are not able to make our case clear?

I think part of this comes from credibility in how we frame these issues, how the information has been brought forward. All one has to do is look at what is going on in the economy to bring about some credibility questions, when we get on to some of these issues of national security.

In this context, let me return to the issue of the nomination of Miguel Estrada. As with many of the claims about the Bush budget, too many of the claims from the other side on this issue simply lack credibility. One of those—probably the most irritating—is the claim that somehow those who oppose the Estrada nomination, or at least would like to have information to prepare ourselves for a vote, are somehow anti-Hispanic.

Does that suggest that groups such as the Congressional Hispanic Caucus, the National Association of Latino Elected and Appointed Officials, the Mexican American Legal Defense and Education Fund, the National Puerto Rican Coalition are anti-Hispanic? I do not get it.

We are making a judgment about how the constitutional process is supposed to work, not talking about whether or not someone is qualified or disqualified because of ethnic background. As far as I am concerned, these kinds of demagogic attacks on Hispanic groups and those who show common cause with them lack credibility. The facts do not meet the circumstance, and they are part of an attempt to intimidate opponents of Mr. Estrada's nomination to stay silent in fulfilling our rightful and responsible position of advice and consent in selecting judges for lifetime appointments to the courts of our country.

It is not going to work, and one reason it is not going to work is the American people expect us to do our job—it is very simple—just as they expect us to pay attention to the economy and do those things that will get us flat off our back and get the economy moving. These things really are common sense, in my view. We are spending weeks upon weeks debating whether one individual is appropriate for a job because many of us do not understand what his views are, and he is unwilling to answer questions, unwilling to have a job interview, and we are forgetting about the 2½ million private sector jobs that we have lost and the 8 million-plus people who are searching for a job. One job versus 8 million.

I have a very hard time understanding where those priorities come out. What is more important to the American people?

A couple of days ago, I asked the distinguished Democratic leader about some conversations he had with the Governors who have been around town from both sides of the aisle. We have all met with them. We have sympathized with some of their needs. I asked if one single Governor lobbied the leader about the Estrada nomination, either to move it on or take it off, or what is happening. Not a single one spoke to the distinguished leader about that nomination.

It should not surprise anyone that our Nation's Governors are more concerned about the economy and the terrible fiscal crisis they face, and here we are talking about this one individual who has been nominated for this one seat on the Court of Appeals for the District of Columbia.

I know from my conversations with people in New Jersey that they feel the same way, and I am sure Americans across America agree. Why is the Senate spending all this time worrying about this one job—I do not get it—while we ignore the millions of Americans who have lost their jobs? We see the consumer confidence falling off the charts. We see our stock market reeling. We see the dollar declining. We are not paying attention to the real things that people are concerned about that make a difference to their lives, their kids' lives, their families' lives. This Estrada nomination is not the priority of the American people, and I do not think it is the priority of my Democratic colleagues.

In a moment, I am going to make a unanimous consent request that we at long last make the economy our top priority. I am going to ask that at least for now we move off the Estrada nomination, as we have done for other concerns—we have passed the omnibus appropriations bill. We were able to take up the child pornography issue this week. We ought to focus on our economy.

The bill for which I will ask unanimous consent was proposed by the distinguished Democratic leader. It includes, among other things, middle-class tax cuts, aid to the States, an expansion of benefits for unemployed Americans, those 100,000 people a week who are dropping off the unemployment rolls right now, and establish rules to restore long-term fiscal discipline and health in our economy.

I recognize my colleagues on the other side of the aisle are not likely to agree to this proposal, but as Democrats continue to emphasize the importance of dealing with our economy, I hope someone on the other side will begin to question the decision to spend days upon days and weeks upon weeks on the nomination of this one individual. I hope they will come to appreciate that there is little time to waste when it comes to boosting our economy and taking care of America's families and getting on to the priority of creating jobs for Americans. I hope they will adapt their priorities, the priorities of the Senate, to those of the American people, which is jobs and economic security.

UNANIMOUS CONSENT REQUEST

I ask unanimous consent that the pending nomination be set aside and that the Senate take up and begin debate on Calendar No. 21, S. 414, a bill to provide an immediate stimulus to our Nation's economy.

The ACTING PRESIDENT pro tempore. Is there objection?

The Senator from Nevada.

Mr. ENSIGN. Reserving the right to object, the way to resolve the nomination is to schedule an up-or-down vote.

I object.

The ACTING PRESIDENT pro tempore. The objection is heard.

The Senator from New Jersey has the floor.

Mr. CORZINE. With full expectation and understanding of the position, I am disappointed with the objection that has been raised, but I am not surprised. We have a critical need to get focused on our economy in this country. The needs of the American people are not being addressed. It is not because we are having this debate. We could move off this debate and move to the economy today, then come back to it like we did with regard to the omnibus appropriations.

The American people should know there are proposals on the table that would stimulate this economy and get it moving, instead of seeing unemployment rates skyrocket, instead of seeing deficits as far as the eye can see being

put in place, with no attention being drawn to them, without dealing with the core things that matter in families' lives, in real people's lives. We could do that and still come back to this and have a full constitutional and responsible debate about what is needed to review a candidate and get on with the real needs facing our country.

I find it very difficult to understand where we are with regard to a lot of these priorities at this point in time, and I hope we will see the light before we have to go further with more of these serious problems that our American families face with their economic security.

I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ENSIGN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ENSIGN. Mr. President, it is my pleasure today to come before the Senate to lend my support to a man of tremendous character and extraordinary legal credentials, Mr. Miguel Estrada. We have heard a lot about this nominee. We have heard a lot about why we should be focusing, why we shouldn't. As I discussed before, I would like to see us get on to things like the economy, like the budget. The simplest way to do that is to have an up-or-down vote on Miguel Estrada.

I will share a few facts about Mr. Estrada and the importance of the nomination to our legal system. Mr. Estrada is an American success story. He came to this country at the age of 17 as an immigrant from Honduras, speaking very little English. He overcame amazing obstacles to rise to the top of the legal profession. After graduating magna cum laude from Harvard Law School, Miguel became a law clerk to the Supreme Court Justice Anthony Kennedy. Since that time, he served as a Federal prosecutor in New York and Assistant Solicitor General of the United States for 1 year in the Bush Administration and 4 years in the Clinton administration. He was handed nothing, and his achievements are the product of hard work, perseverance, and a commitment to education. He is actually living the American dream.

Among other accomplishments, Mr. Estrada has argued 15 cases before the Supreme Court of the United States, including one case in which he represented a death row inmate pro bono. The American Bar Association unanimously rated Mr. Estrada as well qualified for the DC Circuit. This is the ABA's highest possible rating, and the rating typically used as the gold standard for judicial nominees in the Senate Judiciary Committee, especially on the Democrat side.

Mr. Estrada served as a member of the Solicitor General's Office in both the Bush and Clinton administrations. He is enthusiastically supported by both President Bush and President Clinton. The long list of Hispanic groups backing Miguel Estrada's nomination includes the League of United Latin American Citizens, the U.S. Hispanic Chamber of Commerce, the Latino Coalition, the Hispanic Bar Association, and the National Association of Small Disadvantaged Businesses.

Sadly, Mr. Estrada's extraordinary accomplishments and his desire to serve our country have not been enough to protect him from the baseless, vicious, and partisan attacks he has endured through this process. Now is not the time to play partisan games with the United States judicial system. America is facing a judicial vacancy crisis in our Federal courts. The U.S. Courts of Appeals are currently 15 percent vacant, with 25 vacancies out of 167 authorized seats. The DC court, which is the court we are trying to get Miguel Estrada onto, has four vacancies on a 12-judge court.

Adding to this crisis, caseloads in the Federal courts continue to grow dramatically. Filings in the Federal appeals court reached an all-time high last year. The Chief Justice recently warned that the current number of vacancies, combined with the rising caseloads, threatens the proper functioning of the Federal courts. He has asked the Senate to provide every nominee with a prompt up-or-down vote.

Chief Rehnquist is right. Every judicial nominee deserves a prompt hearing and a chance at an up-or-down vote on the Senate floor. This nominee is not being assessed by the traditional standards of quality or by his ability to follow the law as a judge. There is no question that this nomination is being delayed and possibly blocked because of a distorted analysis of his qualifications, policies, and personal views. My colleagues on the other side of the aisle are blocking this nomination simply because he is President Bush's nominee. This is a detriment to the integrity of this body. It is unfair to the nominee. And it is unfair to the American people.

I am asking my colleagues in the Senate today to do what we were elected to do, to allow this body to work its will, and to give Mr. Estrada the up-or-down vote he deserves. I add that the precedent we are setting, this 60-vote threshold for circuit court nominees, is a dangerous precedent. Right now the Republicans are in the majority and we have the Presidency. At some point the Democrats are going to be back in the majority. At some point the Democrats are going to hold the Presidency again. Paybacks are very ugly. But make no mistake about it, with the precedent being set here, unless this can be worked out, those paybacks will come back to haunt the other side of the aisle.

It is vitally important we work this out for the health of the judiciary in this country. It should not become a political tool to be bandied about just because somebody thinks that somebody may have a particular ideology.

We realize that having a Republican Hispanic on the DC Circuit Court of Appeals is something the other side does not like.

But just because they don't like the politics of that does not mean that they should object to him getting on the court. He deserves this. He is qualified for it. He has the integrity to carry it out. And we, as a body, should give this man an up-or-down vote. If we give him an up-or-down vote he will be confirmed by the Senate.

I believe it is our constitutional duty to give him an up-or-down vote. He has had all the hearings he needs to have. We have been doing this for almost 2 years now. We need to give this well-qualified candidate the vote he deserves.

I want to raise a couple of points. The Senator from New Jersey was talking about the economy. He says we have to get on the economy. I agree, we need to take care of the economy. I have some proposals. The President has some proposals. There are going to be other Senators who will have proposals to try to stimulate the economy. The Senator from New Jersey indicated he doesn't think what the President is doing is going to have enough of an impact. I have a proposal that actually, the first year alone, according to the Joint Tax Committee, will bring $135 billion worth of investment into this country. I hope the other side of the aisle is going to join us in that. That is significant even in the size economy that we have.

What the President has laid out as part of his plan—I don't agree with all of it, but there are some good things in it. He has laid out a plan, not only for this year but for solid growth and, in future years, to have good, solid, long-term fiscal policy and long-term growth.

I agree with some of the things the other side of the aisle is talking about with respect to budget deficits. We do have a problem in the outyears with budget deficits. But if we do not fix the economy, we know we will never fix the deficits. We will continue to go further and further into debt. That is why it is critical for us to fix the economy, so we produce more tax revenues so we don't have these huge deficits and threats to Medicare and threats to Social Security and threats to our defense spending in the future.

We have proven here in Washington, DC, we can't cut spending. We can maybe slow down the rate of growth sometimes, but we can't cut spending. As Ronald Reagan talked about—I don't remember the exact quote, but as he said in the early 1980s: The best way to eternal life is to become a Federal agency or department in Washington. He said that because he realized once a program starts, it develops a constituency and it is impossible to cut it. So I believe if the other side is concerned

about the deficit, they should join some of us on this side of the aisle and start cutting out some of the waste and overspending in certain parts of our Government.

Having said that, let me conclude by saying let's have an up-or-down vote on Miguel Estrada so we can get on to some of the other important issues. Make no mistake about it, though; the judiciary and this part of what we do is a very important part of our role as Senators in fulfilling our obligation, our oath of obligation to defend and support the Constitution. We can get on to other things. The budget was not enacted last year. For the first time since 1974 we did not have a budget. Because of that, we ended up with some serious problems last year. The appropriations bills didn't get finished until just a couple of weeks ago.

We are asking the other side to not continue to obstruct the will and the work of this body, to join us, have an up-or-down vote, let the Senate work its will on this nomination so we can get on to other important business of the country. We have a lot of things to do. Let's join together. Let's work across the aisle. Let's join hands. There are a lot of good things we can do for the American people.

I yield the floor.

The PRESIDING OFFICER (Mr. BUNNING). The Senator from South Dakota.

Mr. JOHNSON. Mr. President, I rise to express my great dismay at the policy of the President of the United States that he seems to be attempting to impose on the Senate, which would require each and every one of us in this body to betray the Constitution, to betray our oath of office, and to ignore the constitutional mandate that we give meaningful advice and consent on judicial nominees coming before this body.

I will never betray the Constitution and my oath. I don't care whether we have to be here night after night. I am not going to go down that road. I speak as a Senator who has voted in favor of somewhere in the range of 100 judicial nominees that President Bush has sent to this body, virtually all conservative Republicans. I wish it were different. I wish there were more progressive judges before us. But I understand the President's prerogative, and I respect his right to nominate whomever he may wish.

But this nomination before us is unprecedented. It is not only a matter of Mr. Estrada, it is a matter of the sanctity of our Constitution. It goes to the very oath of office we have taken. It would make a travesty of this body and of the Constitution for us to do otherwise than to object to the manner in which this particular nominee has been presented to the Senate.

The other nominees who have come before this body—for whom I have voted over and over again, somewhere in the range of 100 already—we at least knew what was their legal philosophy. They tended to be conservative Republicans and that is the President's prerogative and I voted for them, but they had either been Federal judges or State judges, allowing us to look at their rulings in the past, or they had been legal scholars with a significant body of work that allowed us to view what the inner workings of their minds were and allowed us to determine whether they were, in fact, within the mainstream of American jurisprudential thought. This nominee stands unique. The precedent would be catastrophic to our Republic if we start, for the first time ever, to approve secret judges, stealth judges, judges who have no record and who will disclose no record to the Senate.

We have no way of knowing what this individual's legal philosophy might be. We have reason to believe he is undoubtedly a capable lawyer, in terms of his technical skills as a Solicitor, but we have no idea where he stands otherwise. The question is not whether we will have Hispanic Republican judges on the District of Columbia Court of Appeals. That is irrelevant. I voted repeatedly, as have my colleagues on my side of the aisle, for Hispanic judges and other high officials in our Government. I am proud to have played a role in supporting our Hispanic colleagues in issue after issue, and position after position. But this, this is a sham. This is a travesty. I believe any Senator who thinks seriously about his oath and reads the Constitution, the obligation—not the right but the obligation of the Senate to provide advice and consent on these offices is a profoundly important role.

It is one thing to approve or not approve Cabinet appointees and other advisers to the President; they come and they go. It is a serious matter, but at least there is not a lifelong appointment involved. In this case, we have a lifetime appointment to the second highest court in the land. What is worse, if we submit to this failure to abide by our constitutional obligations to make a meaningful decision about advice and consent, we will have opened the floodgate because it will become apparent to this President that the strategy to use from here on out is to continue to find individuals who have no track record, who may have a secret ideological agenda, and to send them one after another through the Senate to be rubberstamped by this institution. That is not acceptable. This is a matter of enormous importance.

These individuals, and this particular individual about whom we are debating today, if confirmed, will likely serve on this bench for the rest of our lifetimes, for many of us in this body. President Bush may come and he may go, but these appointments will last a lifetime.

So it is with enormous concern that I rise to express my opposition to this strategy because that is what this is about. It is about a strategy. It is not about whether a Hispanic Republican should be on the bench. It is not about whether a conservative should be on the bench, so long as they fall within the mainstream of American juris prudential thought. The question is, Should this Senate be allowed any idea about this individual's ideology, about his legal philosophy? There we know nothing. We would be surrendering our constitutional prerogatives and our constitutional obligations were we to respond any other way than we have attempted to do on this side. Obviously, we can move on to other agenda items, whether it be stimulating the economy, education, health care, or what have you. All that is required is for leadership of our colleagues on the other side of the aisle in support of the President to either withdraw this nominee or to have him respond to reasonable questions about his philosophy. There is no effort here to require this individual to answer questions that have not been put to other judges. The question is not his response to specific items before the Court. It would be inappropriate to ask those kinds of questions. But this is astonishing. This is stonewalling. That is what this is. It is unacceptable.

Again, over 100 judges that President Bush has nominated have been confirmed by this body, and most have gone through with my support. Most of them were conservative Republican judges. That is fine. But this is different. I hope the American public understands the profound consequences that would flow from our surrendering of our constitutional obligation to at least make meaningful decisions about whether to confirm a particular nominee.

THE BUDGET

Mr. President, I also want to express my great frustration and my great sadness in many ways over priorities that President Bush has recently exhibited relative to our young men and women in uniform and the likely war we are about to embark upon.

Americans all across this country, including my wife and myself, are about to send our finest young men and young women into harm's way in the Iraq region. We can debate the wisdom of that. But that is the reality. I think we all see this coming. We can take great pride in these men and women in uniform, the courage they show, and their commitment to America. They are asking for so little and, yet, they are willing to do whatever is required of our American military. They are the greatest military ever fielded in terms of the sophistication of technology they deal with and the requirements they meet.

But while we put this military together and send them on their way with flags flying and salutes and the prayers of all of us, the President simultaneously has recommended now in his 2004 budget recommendation that we cut impact aid education funding for the children of these very troops who we are sending into war. Is it because we can't afford to finance quality

education of the children of our military? No. President Bush also, as we recall, has called for over $100 billion of tax cuts for primarily the very wealthiest of Americans—primarily on Wall Street. So rather than asking America's wealthiest families to sacrifice at a time of war, the request seems to be of the middle class and the working family, send your sons and daughters into combat, and we will ask America's wealthiest no sacrifice whatever. In fact, we will cut their taxes and we will come back to these families who are sending their sons and daughters into combat and tell them we can't afford to educate your kids while you are gone. And these spouses remain. The Guard and Reserve and active-duty spouses in South Dakota and across every State in our land are worried to death about the prospects of their loved ones, but proud, and upholding America's ideals as they go into heaven knows what kind of combat circumstance they will face with weapons of mass destruction arrayed against them. We hope whatever combat occurs will be swift and decisive and conclude positively for us. But obviously we all know there is great risk for everyone's sons and daughters who go into circumstances such as this.

Is it asking too much of President Bush to at least not cut the education funding for the children who are left behind? Is that asking too much? It says a lot about the priorities of this administration, that we would array the world's finest military on the one hand, provide tax relief for the world's wealthiest people on the other hand, and simultaneously beg poverty when it comes to the schools for the children of our military personnel. Shame on the President. Shame on the President for these kinds of priorities. America deserves better. Our fighting men and women deserve better than this. Fiscal responsibility is not the issue. Priority is the issue.

Then when our military personnel come home again, what do they find but the Veterans Administration underfunded yet again. The administration is asking for higher copayments, higher deductibles, and denies hundreds of thousands of our veterans access to VA health care they were promised. What kind of signal does that send? How are you going to continue to attract the very best of America's young men and women to wear our Nation's uniform when they find that while we do that and pat them on their back and salute them and send them onto combat—4 years, 5 years—at the same time we are not going to take care of their kids. When they come home, we are not going to take care of their health care obligations as we promised we would.

It is long overdue that some of these priorities be met off the top of the barrel, rather than the bottom of the barrel and the crumbs that are left over half doing other things.

I don't know how we can expect in the day and age of a voluntary military to continue to attract the best and the brightest of our young people who deal with the sophisticated kinds of technology they are requested to do now, if they know simultaneously—and they increasingly do—that once they leave home and once they come back, they will in too many cases be treated shabbily by our government, which is too busy stuffing its pockets with cash rather than meeting its obligations to those who are laying their lives literally on the line for America's freedom and American values.

As a member of the Senate Budget Committee, today I also expressed alarm at recent news reports of still larger than expected Federal budget deficits, after an unprecedented 4 years in a row of budget surpluses during the final 4 years of the past Clinton administration—the years in which we were in the black. We were paying down on the accumulated national debt. We were not borrowing from the Social Security trust fund. We now find the bipartisan Congressional Budget Office telling us this red ink will be an astonishing $199 billion. As recently as 2001, we had a surplus of $127 billion.

Mr. President, in 2001—2 years ago—we had a surplus of $127 billion, which followed 3 preceding surplus years in the black. That was responsible budgeting. Some experts now are saying that the 2004 deficit is going to break all records, at over $350 billion, if war expenses and the cost of the Bush tax policies are assumed.

The budget surplus, the paying down of the national debt, and the preservation of the Social Security trust funds—which was what we all had when this administration commenced—have all gone away. The days of not borrowing from the Social Security trust fund are over. We are back. And we are told by the White House budget people at OMB that we will continue to borrow under the President's budget and tax plans out of the Social Security trust fund for the remainder of the decade.

The paying down of the national debt has gone away. The ability to avoid continued high debt service so we can redirect those dollars, instead, to education, to health care, to our veterans, to our military, whatever it might be, has all gone away, because we are going to increasingly pay debt service under the President's budget plan.

The CBO indicates that our Nation will not see a budget surplus again until 2007, and then only if there are no war expenses, no additional tax cuts, and no Medicare prescription drug legislation. We all know that is not going to happen. We are going to have war expenses. We do not know what they will be. We will pay whatever it takes to make sure our men and women in uniform are supported. Whatever the cost is, we will pay it. But the war and the follow-on occupation is likely to cost at least $100 billion.

We know the President has tax cut after tax cut lined up primarily for his wealthiest contributors. And then we know, as well, that we need to move on to prescription drug legislation that is long overdue. We are the only major democratic society in the world that does not have some kind of prescription drug or national health care strategy.

So what we find here is President Bush's proposal to borrow yet another $1 trillion. Now we are not even talking ''B,'' we are talking the ''T'' word. Mr. President, $1 trillion over the coming decade in order to finance Wall Street tax breaks has to be approached with great caution. This seems, to me, to be part of an agenda designed to make it impossible to have strong Federal funding for education, veterans, agriculture, and seniors for generations to come.

This overall strategy strikes me as one that we saw a glimmer of in the 1980s; and that is, a strategy designed to primarily break the Federal Government, to deny all resources. Because when our friends in the far political right try to advance the cause of eliminating Medicare, downsizing Social Security, downsizing or eliminating veterans health care, withdrawing from supporting our schools, getting out of the afterschool and daycare programs, getting away from rural electricity and rural development programs—when they try to do that, they are always met with resistance from the American people, Democrats and Republicans alike.

They have never been able to win that war because Americans want that kind of partnership—that constructive partnership—between Washington and our communities and our States. So in a very cynical tactic, what has been discovered here is that while they cannot win the war on the merits of eliminating that partnership, they can try to break the Government, to deny it the revenue it needs, so that they can come to the American public and say: Well, we would love to support those afterschool programs, we would love to have more police on the beat, we would love to help our fire departments, and we would love to make sure all our young people could afford to go to college or technical programs, but, oh, we are broke; we don't have the money.

That is apparently how some people hope this debate will conclude. They cannot win on the merits of the policy, but what they can try to do is come up with a tax policy that enriches the wealthiest contributors while simultaneously making it increasingly impossible for this Federal Government to live up to its obligations to its people and to build a stronger society, offering more opportunity for every young American—Black, Hispanic, Native American, Caucasian, whoever they might be.

I feel great frustration. I hope the American public understands what really is going on here relative to the President's budget-and-tax agenda. It is a radical agenda. If you don't believe

it is a radical agenda, look at what this President is willing to do, even to the children of our men and women in uniform. It is appalling.

Look at what the President is willing to do to try to stack the court, possibly with ideologues, far outside the mainstream of American jurisprudential thought, to bend the Constitution, to break the Constitution, by bringing nominees to this body who will not share with us their judicial thoughts, who have no scholarly writings, who have no past judicial decisions to look to. They are stealth judges, secret judges.

We cannot allow that to stand. We cannot allow that to happen in our Nation. Our country has been a beacon of democracy, a beacon of openness, a beacon of opportunity. We cannot walk away from that. The Constitution has been the bulwark of making sure that those remain our ideals. For this body to walk away, and to allow for a rubberstamp process to go on, that any individual can come before the Senate Judiciary Committee and the full Senate without the Senate or the committee having any idea who he is or what his agenda really is would be a travesty. It is completely unacceptable.

So, again, I have been proud to work in a bipartisan manner on the confirmation of roughly 100 judges—virtually all conservative Republican judges. But I draw the line here. This is unprecedented, and the constitutional ramifications of what would occur and what precedent would be set would be devastating to this Nation. It would make a mockery of our oath, a mockery of the Constitution, for this body to do anything other than to insist that this nominee share with the body his philosophy relative to legal issues, his jurisprudence.

So I hope we can soon either get to the bottom of who this individual is or move on to other issues that are pressing before our Republic—ranging from health care, education, support of our men and women in uniform. There is much we need to be doing.

Frankly, there is very little pending on the floor at this time, but there is much that ultimately we need to be doing. I hope, in the context of taking on these additional issues, we will do it with fiscal responsibility, which not only involves not succumbing to the temptation to sink our country deeper and deeper and deeper into red ink as far as the eye can see, but also involves correcting President Bush's budget priorities to the degree that we take care of these kids of our military men and women, that we resist the President's temptation to take money away from these schoolhouses in order to give it to Wall Street and to wealthy contributors for political campaigns.

That isn't what we are here for. Those aren't the people we represent. Those aren't the ideals we represent. And this Nation deserves better.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

MEDICAID

Mr. BINGAMAN. Mr. President, I rise to address two or three issues this afternoon. I very much appreciate the chance to do so. First, let me begin with a subject that is extremely important to my State and to many of our States. That is Medicaid. I want to address two different proposals there. First, there is a proposal the administration has made related to Medicaid.

We don't have a written proposal as yet, but we do have various statements from Secretary Thompson. We had a hearing this morning in the Finance Committee that the Presiding Officer attended, as did I. We have had testimony and oral statements and very brief descriptions, but we do not have a written proposal or even a detailed outline of what might be proposed by the administration. But in what they are proposing, I find some real serious concerns.

The other proposal I want to discuss is one I am working on with Congressman DINGELL—we hope to introduce it probably early next week—entitled ''Saving Our States.'' I will try to describe a little bit each of these.

The Nation's Governors have been here this week. I had the good fortune to speak to them last Sunday at one of their subcommittee meetings on human resources about Medicaid. It is clear that they are under severe stress at this point fiscally. It is estimated the States are facing nearly a $30 billion shortfall this year and an $80 billion shortfall in fiscal year 2004. In my view, it is important that the Federal Government respond to that. We cannot just ignore the fact that a growing number of our citizens are uninsured and that more and more people are being dropped from the Medicaid Program and the SCHIP program.

The Federal Government needs to fundamentally reassess its own role in providing health care and reassess its relationship to the States in this regard. As I indicated, I am working with Congressman DINGELL to prepare legislation to do just that.

Let me talk first about the administration's proposal in very broad terms, as I understand it. It contains two parts. One is a set of reforms where, as the Secretary very eloquently described, it would allow States to adopt the best practices. It would allow States to put more emphasis on preventive care for seniors. It would allow States to have the flexibility they need to meet their particular needs. All of that is, of course, very good public policy, at least as stated in its most general form.

As a general matter, I certainly believe the President and the Secretary will find strong support in Congress for that effort. But the second part of their proposal is the one that gives me concern. That is the restructuring of the financing. This part is much more difficult. What this does is basically say that for optional groups and for optional services—and that is an interesting definition as to what is optional; you will find that most of the services and groups currently covered by Medicaid turn out to be optional, and most of the funding that is currently spent on Medicaid turns out to be funding for optional groups and optional services—States would have the ability to get extra money for the first 7 years if they agreed that they would essentially live by a capped amount of Federal funding from now on. It would be about what they were getting in the year 2000 plus a 9-percent increase per year. That is the basic proposal.

In addition to that, they are saying not only are we going to give the States a little extra money, we will reduce the amount of growth in that portion that the State in fact provides. So this is going to save money for the Federal Government. It will save money for the States.

The one thing that is not discussed and that I have great concern about is the effect on the people who are supposed to be getting the health care services under this program; that is, the low-income children and the seniors.

When you look at these definitions, optional groups, which seniors would you think might be in an optional group? Well, under the definition I have been given, if your income is over 74 percent of the Federal poverty rate, you are in an optional group. That means if your income gets anywhere up over about $7,500 or $8,000 per year, somewhere in that range—and I can get the exact figure—you are in an optional group. That means the total resources going to assist in your health care are being capped and are not going to grow as the population needing those services grows, are not going to grow as the usage of those services grows, are not going to grow as the health care cost of those services grows. We all know that there is growth in all three of those areas. That concerns me greatly.

The other part of this which I can understand and makes it somewhat attractive to Governors, some of the Governors who were here this week, is that the Federal proposal says, if you agree to this, not only do you get a little extra Federal money but the amount of State money that you are going to have to put in is also going to be capped. The growth in that is also going to be capped. In other words, we will be able to save you money in your State budget.

This is great for the States; it is great for the Federal Government. The problem is that the health care services available to low-income children and to seniors in our society are going to be reduced and reduced very substantially over the next 10 years under this proposal. So that has been my concern.

Allow me to cite a couple of quotations from people who have spent

a lot of time studying this. The AARP executive director and CEO, Bill Novelli, has said, in relation to the administration's proposal:

This proposal handcuffs states because it leaves people more vulnerable in future years as states struggle to meet increased needs with decreased dollars.

Another quote, from the Consortium for Citizens with Disabilities:

The Bush Administration proposal fails people with disabilities and dishonors the nation's commitment to its residents—it is not in the national interest. . . .What the Medicaid program calls ''optional'' services are, in reality, mandatory disability services for the children and adults who need them. These services often are not only life-saving, but also the key to a positive quality of life—something everyone in our nation deserves.

I believe strongly that the Federal Government at this particular time in our Nation's history should not be stepping away from its commitment to seniors, to people with disabilities, and to low-income children. It should not be leaving the States with the primary responsibility for dealing with growth in the cost of the services to these groups in the future.

The administration will point out that the proposal does provide more funding up front to the States. The proposal is to give $12.7 billion more over the first 7 years to help the States. But there is something of an element of bait and switch in that after the first 7 years, that additional funding goes away.

Secretary Thompson noted in his press conference that is after he has left his position, and I am sure it is after most of the Governors will have left their positions and probably after many of us will have left the Senate. That does not give us an adequate justification for putting in place a system that cuts funding for these vitally needed services in future years.

The administration points out that they are promising the block grant for optional populations in a way that will increase at the same percentages that are projected in its budget. This is difficult to respond to, frankly, until we see a written proposal. We need a written proposal from the administration. We do not have that as yet. We do not have that on the Medicaid subject. We do not have that on Medicare either. And I hope those will be forthcoming soon because they are extremely vital programs for all of our States.

Let me also talk a little about the proposal that I have, along with Congressman DINGELL, that we are going to introduce next week. And I will go into more detail about it next week.

Our idea is that there are certain groups that receive health care services under Medicaid, where the Federal Government needs to step up and pay the full cost of those services—or something very close to the full cost. One such group is so-called dual eligibles. These are people who are eligible for Medicare benefits, but are also low income enough that they are eligible for Medicaid at the same time.

Current law says for those who are covered under the Medicaid law the States pay the lion's share of that cost. We are saying the States should not have to pay the lion's share of that cost. This is something where these folks have become eligible for Medicare. We should be paying 100 percent of that cost at the Federal level.

Another group the Federal Government should be underwriting the cost of providing services for are illegal immigrants who come to our health care providers needing emergency attention. Here you can get into quite a philosophical argument as to whether or not these services should be provided. The reality is, if you are a doctor, if you are working in an emergency room and someone shows up who needs emergency care, you are obligated under your Hippocratic oath and the laws of decency, basically, to provide that care, if you are able to do so. To turn a person away because they do not have the right health insurance coverage, or they cannot demonstrate to you their financial solvency, when their circumstance is critical, is just not the way we should do business.

The question is, Once that person has come into that emergency room and asked for that emergency care, who should reimburse the hospital for it? Who should pay the cost of that physician? At the current time, the States are picking that up, or the counties are picking that up, or the health care providers themselves are doing this on a pro bono basis. The reality is the Federal Government should be responsible for that, and we are proposing that in our legislation.

Another group, of course, is Native American citizens. We have a great many Native Americans in my home State. The Federal Government should be stepping up to its responsibility to ensure that health care for these individuals is provided. We propose that as part of our proposal for saving our States as well.

I will have another chance to talk this ''saving our States'' proposal when we introduce it early next week. I very much wanted to make reference to it today and indicate my great concern about the proposal I understand the administration is about to present to us. The truth is, the cost of providing health care is very high, and it is not getting any cheaper. We need to budget that in and we need to acknowledge that and we need to recognize that as a matter of public policy in this country, we should provide that basic care to seniors, to low-income children, to those who are disabled. The Medicaid Program does that. We need to keep the Medicaid Program sound and not undermine it by rationing back on the dollars we are willing to spend on those basic services.

SOUTHWEST REGIONAL BORDER AUTHORITY ACT

Mr. President, let me also talk about a bill I introduced yesterday. This is a bill entitled Southwest Regional Border Authority Act. We offered this same bill last May. I am very pleased this year I am joined by Senator KAY BAILEY HUTCHISON, and also Senator BARBARA BOXER. This legislation would create an economic development authority for the Southwest border region that would be charged with awarding grants to border communities in support of local economic development projects. The need for a regional border authority is acute. The poverty rate in the Southwest border region is over 20 percent, nearly double the national average of 11.7 percent. The unemployment rate in Southwest border counties can reach as high as six times the national unemployment rate. The per capita personal income in the region is greatly below the national average. In many border counties, the per capita personal income is less than 50 percent of the national average. There is a lack of adequate access to capital that has made it difficult for businesses to get started in this region.

In addition, the development of key infrastructures, such as water, waste water, transportation, public health, and telecommunications—all of these areas of infrastructure need have failed to keep pace with the population explosion and the increase in commerce across our border with Mexico.

Mr. President, the counties in the Southwest border region are among the most economically distressed in the Nation. It should be noted that there are only a few such regions of economic distress throughout the country. Virtually all of the other regions that face this same economic distress are, in fact, served by regional economic development commissions today. These commissions include the Appalachian Regional Commission, the Delta Regional Authority, the Denali Commission in Alaska, and the Northern Great Plains Regional Authority.

In order to address the needs of the border region in a similar fashion, we are proposing this Regional Economic Commission for the Southwest border. The bill is based on four guiding principles.

First, it starts from the premise that people who live on the Southwest border know best when it comes to making decisions as to how to improve their own communities.

Second, it employs a regional approach to economic development and encourages communities to work across county and State lines where appropriate. All too often in the past, the efforts to improve our region have hit roadblocks as a result of poor coordination and communication between communities.

Third, it creates an independent agency, meaning it will be able to make decisions that are in the best interest of the border communities, without being subject to the politics of Federal agencies.

Finally, it brings together representatives of the four Southwest border States and the Federal Government as partners to work on improving the

standard of living for people living on the border.

This is not just another commission, and it is certainly not just another grant program. I believe this Southwest regional border authority not only will help leverage new private sector funding, it will also help to better target the Federal funds that are available to those projects that are most likely to produce results.

The legislation accomplishes this through a sensible mechanism of development planning. The purpose of the planning process is to ensure that priorities are reflected in the projects funded by the authority. It also is to provide flexibility to the authority to fund projects that are regional in nature.

I think the process has various advantages, and there are great benefits that can be derived from setting up this border authority. I believe very strongly this legislation is overdue. It is something that should have happened several years ago. For too long, the needs of the Southwest border have been ignored, overlooked, and underfunded.

I am confident the creation of a Southwest regional border authority not only will call attention to the great needs that exist on the border, but will help us to meet those needs. I urge my colleagues to give attention to this legislation that we have introduced. I hope other colleagues will choose to support it. I hope we can have a hearing on it in the near future and move the legislation through the Senate and through the House to the President for signature.

Mr. President, let me say a few words about the Estrada nomination as well. I know that is a subject of great concern to many on both sides of the aisle. I have taken some time in the last couple of days to review the transcript of the testimony that Mr. Estrada gave in the Judiciary Committee.

I have been struck by his position, as stated numerous times in that testimony, that he was not willing to share his views on any issue related to judicial philosophy or court decisions with the committee.

I was particularly struck by the discussion he had with our colleague, Senator SCHUMER. Senator SCHUMER was asking about Mr. Estrada's earlier statement that he saw as part of his job working for Justice Kennedy recommending law clerks and asking them questions, of course, interviewing them before he made the recommendation.

Senator SCHUMER said:

> Isn't it appropriate that you would ask those questions? Isn't it also appropriate that we would be asking you some questions to try to determine your views?

Mr. Estrada said in response to that question:

> Questions that I asked in doing my job for Justice Kennedy were intended to ascertain whether there were any strongly felt views that would keep that person from being a good law clerk to the Justice.

That is entirely appropriate, in my view, and a very well-stated position. That, in my view, is the exact job we have to perform as we screen and consider the various nominees for Federal court positions that the President sends us. We need to determine whether they have any strongly felt views that would keep them from being good members of the Court of Appeals for the District of Columbia, good members of the district court, or good members of the Supreme Court.

My own position is that I am willing, and have demonstrated many times on the Senate floor my willingness, to support conservative nominees to the court. I believe many of those people are making excellent judges in our Federal court system. But I also want to be sure their views on issues that relate to their duties are mainstream, that they are not extreme. The only way I know to carry out that responsibility is to ask some questions to determine whether they have strongly felt views, as Mr. Estrada said, that would keep them from being, as he said in the case he was referring to, a good law clerk to the Justice.

In the Senate, when we are considering people for lifetime appointments to the Federal judiciary, we have a heavier responsibility to be sure there are no strongly held views that would keep these individuals from being good judges in our Federal court system for the remainder of their lives. That is what I believe we should be trying to do. I think that is what many members of the Judiciary Committee were trying to do in the hearing that took place on Mr. Estrada.

His view was that he would not respond to questions that were put to him about any such views, and he repeatedly said he did not think it was appropriate for him to comment on any personal views he might have. Since, of course, he would not comment on his personal views, there is no way to determine whether any of them are extreme.

I do not think that is an adequate carrying out of responsibilities by the Judiciary Committee. I do not think it is an adequate carrying out of responsibilities by the Senate. And I think we do need more information. That has been my position. Before we move ahead with this nomination, we should get more information.

I hope the Judiciary Committee will consider reconvening a hearing, once again providing the nominee with an opportunity to respond, as other nominees have traditionally responded. That is all we are asking, not that he give us information others were not asked to give or others did not give, but that he essentially provide basic information.

He may express some views with which I do not agree. That is fine. Many judges for whom I have voted also, I believe, expressed views with which I did not agree. At least I was confident their views were not extreme. At least I was confident their views were mainstream and that they were within the mainstream as far as their conception of where the law is and where the law ought to go.

I hope very much we can get the additional information we have been asking for and can proceed to dispose of this nomination. That would be my great hope. I do not know what the intent of the majority leader is at this point or the intent of the Judiciary Committee. I hope we can proceed in that manner.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ALLARD). Without objection, it is so ordered.

Mr. REID. Mr. President, last evening, there was a lot of talk about whether memos at the Solicitor General's Office had ever been made public. I am going to talk about that, but I think we should put this whole debate involving Miguel Estrada in a framework that people who are watching the debate who are not familiar with Senate procedure can better understand what is going on.

In effect, Miguel Estrada has asked his employer, the Federal Government, to give him a job to last for life. As with any job, one usually has to have an interview. In this instance, in addition to an interview, you bring whatever papers you have, whether it is a resume or other documents that your employer may want to find out if you should be hired. In the instance of Miguel Estrada, he simply has not filled out the requisite papers, he has not answered the questions or supplied the necessary information.

An employer in Nevada, whether a company that sold tires or a company that sold food—it would not matter what it is—if somebody applied for a job, they would have to answer the questions that employer asked and give the requisite papers. In this instance, Democratic members of the Judiciary Committee believe he has not answered the questions. By reading the transcript, it is quite clear that is true.

But yesterday, the distinguished Senator from Utah, Mr. HATCH, engaged in extensive discussion regarding the release of Solicitor General memoranda. As everyone by this time knows, we have asked that Miguel Estrada release memos he wrote while he was an attorney in the Solicitor General's Office. The administration has refused to provide these documents.

There are two basic charges raised by my distinguished colleagues on the other side of the aisle about these memoranda: First, the distinguished chairman of the committee, Senator HATCH, has argued that when such

memos were provided in the past, they were leaked.

My colleague argued that they have never, ever been given to anyone on Capitol Hill.

Second, he qualified his remarks by saying to the extent memos had been provided, they were provided because there was some allegation of improper behavior by the nominee in connection with the memo.

I will place in the RECORD a series of correspondence between the Judiciary Committee and the Justice Department from 1987 that demonstrates in fact such documents were provided. This is only one instance. These letters show that these memoranda were not leaked. They show that they were in fact provided freely by the Justice Department.

In a letter dated August 10, 1987, then Judiciary Committee Chairman BIDEN set forth a request for several types of documents relating to the nomination of Judge Bork to the Supreme Court. In the letter, Senator BIDEN requested four classes of Bork-related memos: He requested those that related to the Watergate controversy; second, all documents generated or involving Solicitor General Bork relating to the constitutionality, appropriateness, or use of the pocket veto; third, all documents generated to or involving then Solicitor General Bork regarding school desegregation; fourth, all documents generated to or involving then Solicitor General Bork in forming the U.S. position in a series of specific cases.

These requests involved memoranda provided by attorneys in the Solicitor General's Office to the Solicitor General recommending such things as whether to file amicus briefs in particular cases.

In this instance, what happened to Senator BIDEN's request? Well, in fact a letter came to him dated August 24 from then Republican Assistant Attorney General Bolton to Democratic Senator JOE BIDEN. In that letter, the Justice Department declined to provide documents relating to the Watergate controversy. This denial of documents was based on executive privilege. The documents involved did not include Bork but, rather, related to communications between and among close advisers to the President and the President.

Yesterday, Senator CRAPO made reference to the fact that some documents were not turned over to the committee during this time. While it is true that the Watergate documents were not turned over, and this is based on executive privilege, that does not affect our debate. Solicitor General memoranda from Estrada to his supervisors are not covered by executive privilege. No one has ever claimed they are.

In 1987, however, the Justice Department did provide the other documents I described above which were requested in the Biden letter. In these materials, the Justice Department noted in the letter: The vast majority of the documents that have been requested reflect or disclose internal deliberations within the executive branch. We wish to cooperate to the fullest extent with the committee and to expedite Judge Bork's confirmation process. The letter concludes that the documents referred to above would be provided. The letter confirms the nature and circumstances under which the Solicitor General memoranda were provided to the Judiciary Committee during Bork's hearings.

So what about the argument that to the extent memoranda have been provided, they were only provided when the request alleged misconduct or malfeasance on the part of the nominee or other attorneys involved in the matter? This simply is not true.

I have a list of internal attorney memoranda provided during the Bork, Reynolds, and Rehnquist nominations. These documents, some of which are from the Solicitor's Office, others from other parts of the Justice Department, were made public and given to Senator BIDEN, and in other instances given to others. For example, all documents related to school desegregation between 1969 and 1977 relating to Bork in any way, there was no allegation of misconduct; documents related to Halpren v. Kissinger, no allegation of misconduct.

I have about 14 of these that were made a part of proceedings before the Senate.

I ask unanimous consent that this list be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

All documents related to school desegregation between 1969 and 1977 relating to Bork in any way (disclosure included, among others, the SG Office memos about *Vorcheimer* v. *Philadelphia*, known as ''the Easterbrook memo''; *United States* v. *Omaha; United States* v. *Demopolis City* (school desegregation in Alabama)): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Documents related to *Halperin* v. *Kissinger* (civil suit for 4th Amendment violations for wiretapping): No allegation of misconduct or malfeasance by the nominee.

Memos about whether to file an amicus brief in *Hishon* v. *King & Spaulding* (gender discrimination at a law firm): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos regarding *Wallace* v. *Jaffree* (school prayer in Alabama): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about Congressional reapportionment in Louisiana and one-person, one-vote standard: No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos regarding possible constitutional amendment in 1970 to overturn *Green* v. *New Kent County*, and preserve racial discrimination in Southern schools: No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memo of November 16, 1970 from John Dean: No allegation of misconduct or malfeasance by the nominee.

Memos of William Ruckelshaus of December 19, 1969 and February 6, 1970: No allegation of misconduct or malfeasance by the nominee.

Memos of Robert Mardian of January 18 1971: No allegation of misconduct or malfeasance by the nominee.

Memos of law clerk to Justice Jackson: No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about whether or not to seek Supreme Court review in *Kennedy* v. *Sampson* (pocket veto): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *Hills* v. *Gautreaux* (racial discrimination in housing in Chicago): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *DeFunis* v. *Odegaard* (affirmative action program at the University of Washington law school): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *Morgan* v. *McDonough* (public school desegregation in Boston): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *Pasadena* v. *Spengler* (public school desegregation): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *Barnes* v. *Kline* (military assistance in El Salvador): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Memos about *Kennedy* v. *Jones* (pocket veto and the mass transit bill and bill to assist the disabled): No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Documents related to Supreme Court selection process of Nixon and Reagan: No allegation of misconduct or malfeasance by the nominee or anyone else at the Justice Department.

Mr. REID. I say respectfully that the statements made by the distinguished Senator from Utah were without basis of fact. Here we have records that were not leaked, they are directly as we said they were last night. We were unable to get the floor, but in fact that is what the story was.

So now that we do have the floor, I ask unanimous consent that the letter dated August 10, 1987, to Attorney General Ed Meese from JOSEPH BIDEN be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, August 10, 1987.

Hon. EDWIN MEESE III,
Attorney General, Department of Justice, Washington, DC.

DEAR GENERAL MEESE: As part of its preparation for the hearings on the nomination of Judge Robert Bork to the Supreme Court, the Judiciary Committee needs to review certain material in the possession of the Justice Department and the Executive Office of the President.

Attached you will find a list of the documents that the Committee is requesting. Please provide the requested documents by August 24, 1987. If you have any questions about this request, please contact the Committee staff director, Diana Huffman, at 224–0747.

Thank you for your cooperation.

Sincerely,

JOSEPH R. BIDEN, Jr.,
Chairman.

REQUEST FOR DOCUMENTS REGARDING THE NOMINATION OF ROBERT H. BORK TO BE ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT

Please provide to the Committee in accordance with the attached guidelines the following documents in the possession, custody or control of the United States Department of Justice, the Executive Office of the President, or any agency, component or document depository of either (including but not limited to the Federal Bureau of Investigation):

1. All documents generated during the period from 1972 through 1974 and constituting, describing, referring or relating in whole or in part to Robert H. Bork and the so-called Watergate affair.

2. Without limiting the foregoing, all documents generated during the period from 1972 through 1974 and constituting, describing, referring or relating in whole or in part to any of the following:

a. any communications between Robert H. Bork and any person or entity relating in whole or in part to the Office of Watergate Special Prosecution Force or its predecessors- or successors-in-interest;

b. the dismissal of Archibald Cox as Special Prosecutor;

c. the abolition of the Office of Watergate Special Prosecution Force on or about October 23, 1973;

d. any efforts to define, narrow, limit or otherwise curtail the jurisdiction of the Office of Watergate Special Prosecution Force, or the investigative or prosecutorial activities thereof;

e. the decision to reestablish the Office of Watergate Special Prosecution Force in November 1973;

f. the designation of Mr. Leon Jaworski as Watergate Special Prosecutor;

g. the enforcement of the subpoena at issue in *Nixon* v. *Sirica*;

h. any communications on October 20, 1973 between Robert H. Bork and then-President Nixon, Alexander Haig, Leonard Garment, Fred Buzhardt, Elliot Richardson, or William Ruckelshaus;

l. any communications between Robert H. Bork and then-President Nixon, Alexander Haig and/or any other federal official or employee on the subject of Mr. Bork and a position or potential position as counsel to President Nixon with respect to the so-called Watergate matter;

m. any action, involvement or participation by Robert H. Bork with respect to any issue in the case of *Nader* v. *Bork*, 366 F. Supp. 104 (D.D.C. 1975), or the appeal thereof;

n. any communication between Robert H. Bork and then-President Nixon or any other federal official or employee, or between Mr. Bork and Professor Charles Black, concerning Executive Privilege, including but not limited to Professor Black's views on the President's ''right'' to confidentiality as expressed by Professor Black in a letter or article which appeared in the *New York Times* in 1973 (see Mr. Bork's testimony in the 1973 Senate Judiciary Committee hearings on the Special Prosecutor);

o. the stationing of FBI agents at the Office of Watergate, Special Prosecution Force on or about October 20, 1973, including but not limited to documents constituting, describing, referring or relating to any communication between Robert H. Bork, Alexander Haig, or any official or employee of the Office of the President or the Office of the Attorney General, on the one hand, and any official or employee of the FBI, on the other; and

p. the establishment of the Office of Watergate Special Prosecution Force, including but not limited to all documents constituting, describing, referring or relating in whole or in part to any assurances, representations, commitments or communications by any member of the Executive Branch or any agency thereof to any member of Congress regarding the independence or operation of the Office of Watergate Special Prosecution Force, or the circumstances under which the Special Prosecutor could be discharged.

3. The following documents together with any other documents referring or relating to them:

a. the memorandum to the Attorney General from then-Solicitor General Boark, dated August 21, 1973, and its attached ''redraft of the memorandum intended as a basis for discussion with Archie Cox'' concerning ''The Special Prosecutor's authority'' (typeset copies of which are printed at pages 287–288 of the Senate Judiciary Committee's 1973 ''Special Prosecutor'' hearings);

b. the letter addressed to Acting Attorney General Bork from then-President Nixon, dated October 20, 1973., directing him to discharge Archibald Cox;

c. the letter addressed to Archibald Cox from then-Acting Attorney General Bork, dated October 20, 1973, discharging Mr. Cox from his position as Special Prosecutor;

d. Order No. 546–73, dated October 23, 1973, signed by then-Acting Attorney General Bork, entitled ''Abolishment of Office of Watergate Special Prosecutor Force'';

e. Order No. 547–73, dated October 23, 1973, signed by then-Acting Attorney General Bork, entitled ''Additional Assignments of Functions and Designation of Officials to Perform the Duties of Certain Offices in Case of Vacancy, or Absence therein or in Case of Inability or Disqualification to Act'';

f. Order No. 551–73, dated November 2, 1973, signed by then-Acting Attorney General Bork, entitled ''Establishing the Office of Watergate Special Prosecution Force'';

g. the Appendix to Item 2.f., entitle ''Duties and Responsibilities of Special Prosecutor'';

h. Order No. 552–73, dated November 5, 1973, signed by then-Acting Attorney General Bork, designating ''Special Prosecutor Leon Jaworski the Director of the Office of Watergate Special Prosecution Force'';

i. Order No. 554–73, dated November 19, 1973, signed by then-Acting Attorney General Bork, entitled ''Amending the Regulations Establishing the Office of Watergate Special Prosecution Force''; and

j. the letter to Leon Jaworski, Special Prosecutor, from then-Acting Attorney General Bork, dated November 21, 1973, concerning Item 2.i.

4. All documents constituting, describing, referring or relating in whole or in part to any meetings, discussions and telephone conversations between Robert H. Bork and then-President Nixon, Alexander Haig or any other federal official or employee on the subject of Mr. Bork's being considered or nominated for appointment to the Supreme Court.

5. All documents generated from 1973 through 1977 and constituting, describing, referring or relating in whole or in part to Robert H. Bork and the constitutionality, appropriateness or use by the President of the United States of the ''Pocket Veto'' power set forth in Art. I, section 7, paragraph 2 of the United States Constitution, including but not limited to all documents constituting, describing, referring or relating in whole or in part to any of the following:

a. The decision not to petition for certiorari from the decision of the United States Court of Appeals for the District of Columbia Circuit in *Kennedy* v. *Sampson*, 511 F.2d 430 (1947);

b. the entry of the judgment in *Kennedy* v. *Jones*, 412 F. Supp. 353 (D.D.C. 1976); and

c. the policy regarding pocket vetoes publicly adopted by President Gerald R. Ford in April 1976.

6. All documents constituting, describing, referring or relating in whole or in part to Robert H. Bork and the incidents at issue in *United States* v. *Gray, Felt & Miller*, No. Cr. 78–00179 (D.D.C. 1978), including but not limited to all documents constituting, describing, referring or relating in whole or in part to any of the exhibits filed by counsel for Edward S. Miller in support of his contention that Mr. Bork was aware in 1973 of the incidents at issue.

7. All documents constituting, describing or referring to any speeches, talks, or informal or impromptu remarks given by Robert H. Bork on matters relating to constitutional law or public policy.

8. All documents constituting, describing, referring or relating in whole or in part either (i) to all criteria or standards used by President Reagan in selecting nominees to the Supreme Court, or (ii) to the application of those criteria to the nomination of Robert H. Bork to be Associate Justice of the Supreme Court.

9. All documents constituting, describing, referring or relating in whole or in part to Robert H. Bork and any study or consideration during the period 1969–1977 by the Executive Branch of the United States Government or any agency or component thereof of school desegregation remedies. (In addition to responsive documents from the entities identified in the beginning of this request, please provide any responsive documents in the possession, custody or control of the U.S. Department of Education or its predecessor agency, or any agency, component or document depository thereof.)

10. All documents constituting, describing, referring or relating in whole or in part to the participation of Solicitor General Robert H. Bork in the formulation of the position of the United States with respect to the following cases:

a. *Evans* v. *Wilmington School Board*, 423 U.S. 963 (1975), and 429 U.S. 973 (1976);

b. *McDonough* v. *Morgan*, 426 U.S. 935 (1976);

c. *Hills* v. *Gautreaux*, 425 U.S. 284 (1976);

d. *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424 (1976);

e. *Roemer* v. *Maryland Board of Public Education*, 426 U.S. 736 (1976);

f. *Hill* v. *Stone*, 421 U.S. 289 (1975); and

g. *DeFunis* v. *Odegaard*, 416 U.S. 312 (1975).

GUIDELINES

1. This request is continuing in character and if additional responsive documents come to your attention following the date of production, please provide such documents to the Committee promptly.

2. As used herein, ''document'' means the original (or an additional copy when an original is not available) and each distribution copy of writings or other graphic material, whether inscribed by hand or by mechanical, electronic, photographic or other means, including without limitation correspondence, memoranda, publications, articles, transcripts, diaries, telephone logs, message sheets, records, voice recordings, tapes, film, dictabelts and other data compilations from which information can be obtained. This request seeks production of all documents described, including all drafts and distribution copies, and contemplates production of responsive documents in their entirety, without abbreviation or expurgation.

3. In the event that any requested document has been destroyed or discarded or otherwise disposed of, please identify the document as completely as possible, including without limitation the date, author(s), addressee(s), recipient(s), title, and subject matter, and the reason for disposal of the document and the identity of all persons who authorized disposal of the document.

4. If a claim is made that any requested document will not be produced by reason of a privilege of any kind, describe each such document by date, author(s), addressee(s), recipient(s), title, and subject matter, and set forth the nature of the claimed privilege with respect to each document.

Mr. REID. Mr. President, this outlines seven pages of documents he wants and certain guidelines that would be followed so that the Attorney General's Office would be protected.

In addition, I ask unanimous consent that a letter dated August 24 of that same year to JOSEPH R. BIDEN from Mr. Bolton, the Assistant Attorney General, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE, OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC.

Hon. JOSEPH R. BIDEN, Jr.
Chairman, Senate Judiciary Committee, Washington, DC.

DEAR CHAIRMAN BIDEN: This responds further to your August 10th letter requesting certain documents relating to the nomination of Judge Robert Bork to the Supreme Court. Specifically, this sets forth the status of our search for responsive documents and the methods and scope of review by the Committee.

As we have previously informed you in our letter of August 18, the search for requested documents has required massive expenditures of resources and time by the Executive Branch. We have nonetheless, with a few exceptions discussed below, completed a thorough review of all sources referenced in your request that were in any way reasonably likely to produce potentially responsive documents. The results of this effort are as follows:

In response to your requests numbered 1–3, we have conducted an extensive search for documents generated during the period 1972–1974 and relating to the so-called Watergate affair. We have followed the same procedure, in response to request number 4, for all documents relating to consideration of Robert Bork for the Supreme Court by President Nixon or his subordinates. We have completed our search of relevant Department of Justice and White House files for documents responsive to these requests. The Federal Bureau of Investigation also has completed its search for responsive documents, focusing on the period October–December 1973 and on references to Robert Bork generally.

Most of the documents responsive to requests numbered 1–4 are in the possession of the National Archives and Records Administration, which has custody of the Nixon Presidential materials and the files of the Watergate Special Prosecution Force. The Archives staff supervised and participated in the search of the opened files of the Nixon Presidential materials and the files of the Watergate Special Prosecution Force, which was directed to those files which the Archives staff deemed reasonably likely to contain potentially responsive documents.

Pursuant to a request by this Department under 36 C.F.R. 1275, the Archives staff also examined relevant unopened files of the Nixon Presidential materials, and, as required under the pertinent regulations, submitted the responsive documents thus located for review by counsel for former President Nixon. Mr. Nixon's counsel, R. Stan Mortenson, interposed no objection to release of those submitted documents that (a) reference, directly or indirectly, Robert Bork, or (b) were received by or disseminated to persons outside the Nixon White House. Mr. Mortenson on behalf of Mr. Nixon objected to production of the documents which are described in the attached appendix. Mr. Mortenson represents that these documents constitute purely internal communications within the White House and contain no direct or indirect reference to Robert Bork.

Mr. Mortenson also objected on the same grounds to production of unopened portions of two documents produced in incomplete form from the opened files of the Nixon Presidential materials:

1. First page and redacted portion of fifth page of handwritten note of John D. Ehrlichman dated December 11, 1972.

2. All pages other than the first page of memorandum from Geoff Shepard to Ken Cole dated June 19, 1973.

Mr. James J. Hastings, Acting Director of the Nixon Presidential Materials Project, has reviewed these two documents and has advised us that the unopened portions of neither document contain any direct or indirect reference to Judge Bork.

Our search has not yielded a copy of the document referenced in paragraph ''a'' of your request numbered 3, which, as you correctly note, is printed at pages 287–288 of the Judiciary Committee's 1973 ''Special Prosecutor'' hearings.

Among the documents collected by the Department are certain documents generated in the defense of *Halperin* v. *Kissinger*, Civil Action No. 73–1187 (D. D.C.), a suit filed against several federal officials in their individual capacity, which remains pending. The Department has an ongoing attorney-client relationship with the defendants in *Halperin,* which precludes us from releasing certain documents containing client confidences and litigation strategy, without their consent. 28 C.F.R. 50.156(a)(3).

All documents responsive to request number 5, concerning the pocket veto, have been assembled.

All documents responsive to request number 6 have been assembled. The exhibits filed by counsel for Edward S. Miller on July 12, 1978 and referred to in your August 10 letter, remain under seal by order of the United States District Court for the District of Columbia. However, a list of the thirteen documents has been unsealed. We have supplied copies of eleven of these documents, including redacted versions of two of the documents (a few sentences of classified material have been deleted). We have supplied unclassified versions of two of these eleven documents, as small portions of them remain classified. We are precluded by Rule 6(e) of the Rules of Criminal Procedure from giving you access to two other exhibits—classified excerpts of grand jury transcripts—filed on July 12, 1978. We also searched the files of several civil cases related to the Felt and Miller criminal prosecution, as well as the documents generated during the consideration of the pardon for Felt and Miller.

With respect to request number seven, Judge Bork has previously provided to the Committee a number of his speeches, which we have not sought to duplicate. We have sought and supplied any additional speeches, press conferences or interviews by Mr. Bork, as well as any contemporaneous documents which tend to identify a date or event where he gave a speech or press interview during his tenure at the Department.

On request number eight, there are no documents in which President Reagan has set forth the criteria he used to select Supreme Court nominees, or their application to Judge Bork, other than the public pronouncements and speeches we have assembled.

Our search for documents responsive to request number nine has been time-consuming and very difficult, and is not at this time entirely complete. In order to conduct as broad a search as possible, we requested the files in every case handled by the Civil Rights Division or Civil Division, between 1969–77, which concerned desegregation of public education. Although most of these case files have been retrieved, several remain unaccounted for and perhaps have been lost. We expect to have accounted for the remaining files (which may or may not contain responsive documents) in the next few days. We have also assembled some responsive documents obtained from other Department files. The Department of Education is nearing completion of its search of its files, and those of its predecessor agency, HEW.

We have assembled case files for the cases referred to in question ten, with the exception of *Hill* v. STONE, for which there is no file. We have no record of the participation of the United States in *Hill* v. *Stone,* or consideration by the Solicitor General's office of whether to participate in that case.

A few general searches of certain front office files are still underway, and we expect those searches to be concluded in the next few days. We will promptly notify you should any further responsive documents come into our possession.

As you know, the vast majority of the documents you have requested reflect or disclose purely internal deliberations within the Executive Branch, the work product of attorneys in connection with government litigation or confidential legal advice received from or provided to client agencies within the Executive Branch. The disclosure of such sensitive and confidential documents seriously impairs the deliberative process within the Executive Branch, our ability to represent the government in litigation and our relationship with other entities. For these reasons, the Justice Department and other executive agencies have consistently taken the position, in response to the Freedom of Information Act and other requests, that it is not at liberty to disclose materials that would compromise the confidentiality of any such deliberative or otherwise privileged communications.

On the other hand, we also wish to cooperate to the fullest extent possible with the Committee and to expedite Judge Bork's confirmation process. Accordingly, we have decided to take the exceptional step of providing the Committee with access to responsive materials we currently possess, except those privileged documents specifically described above and in the attached appendix. Of course, our decision to produce these documents does not constitute a waiver of any future claims of privilege concerning other documents that the Committee request or a waiver of any claim over these documents with respect to entities or persons other than the Judiciary Committee.

As I have previously discussed with Diana Huffman, the other documents will be made available in a room at the Justice Department. Particularly in light of the voluminous and privileged nature of these documents, copies of identified documents will be produced, upon request, only to members of the Judiciary Committee and their staff and only on the understanding that they will not be shown or disclosed to any other persons. Please have you staff contact me to arrange a mutually convenient time for inspection of the documents.

As I stressed in my previous letter, if the Committee is or becomes aware of any documents it believes are potentially responsive but have not been produced, please alert us as soon as possible and we will attempt to locate them.

Should you have any questions or comments, please contact me as soon possible. Thank you for your cooperation.

Sincerely,

LAURA WILSON
(for John R. Bolton, Assistant Attorney General)

APPENDIX

DOCUMENTS SUBJECT TO OBJECTION BY MR. NIXON'S COUNSEL

1. Memorandum to Buzhardt and Garment, from Charles Alan Wright, January 7, 1973. Subject: June 6th meeting with the Special Prosecutor. (Document No. 8)

2. Memorandum to Buzhardt and Garment, from Charles Alan Wright, January 7, 1973. Subject: June 6th meeting with the Special Prosecutor. (Document No. 9)

3. Memorandum to Garment, from Ray Price, July 25, 1973. Subject: Procedures re: Subpoena. (Document No. 13)

4. Memorandum to General Haig, from Charles A. Wright, July 25, 1973. Subject: Proposed redrafts of letters. (Document No. 14)

5. Draft letter to Senator Ervin, dated July 26, 1973. Subject: two subpoenas from Senator Ervin. (Document No. 15)

6. Draft letter to Judge Sirica, dated July 26, 1973. Subject: subpoena duces tecum. (Document No. 16)

7. Memorandum to The Lawyers, from Charlie Wright, dated July 25, 1973. Subject: Thoughts while shaving. (Document No. 17)

8. Memorandum to The President, from J. Fred Buzhardt, Leonard Garment, Charles A. Wright, dated July 24, 1973. Subject: Response to Subpoenas. (Document No. 18)

9. Memorandum to Ray Price, from Tex Lezar, dated October 17, 1973. Subject: WG Tapes. (Document No. 20)

10. Memorandum to Leonard Garment and J. Fred Buzhardt, from Charles A. Wright, dated August 3, 1973. Subject: Discussions with Philip Lacovara. (Document No. 25)

11. Memorandum to the President, from Leonard Garment, J. Fred Buzhardt, Charles A. Wright, dated August 2, 1973. Subject: Brief for Judge Sirica. (Document No. 26)

12. Memorandum to Len Garment, Fred Buzhardt, Doug Parker and Tom Marinis, From Charlie Wright, dated August 1, 1973. Subject: note regarding brief. (Document No. 27)

13. Memorandum to The President, from J. Fred Buzhardt, Leonard Garment and Charles A. Wright, dated July 24, 1973. Subject: Response to Subpoenas. (Document No. 28)

14. Draft letter to Senator Ervin, dated July 26, 1973. Subject: two subpoenas issued July 23rd. (Document No. 29)

15. Draft letter to Judge Sirica, dated July 26, 1973. Subject: subpoena duces tecum. (Document No. 30)

16. Memorandum to J. Fred Buzhardt, Leonard Garment and Charles Alan Wright, from Thomas P. Marinis, Jr. (undated). Subject: Appealability of Cox Suit. (Document No. 31)

17. Notes (handwritten) (undated). Subject: [appears to be notes of oral argument]. (Document No. 32)

18. Memorandum to The President, from Charles Alan Wright, dated September 14, 1973. Subject: Response to Court's memorandum. (Document No. 34)

19. Handwritten notes. (Document No. 36)

20. Memorandum to J. Frederick Buzhardt, from Charles Alan Wright, dated June 2, 1973. Subject: Executive privilege. (Document No. 41)

21. Memorandum to J. Frederick Buzhardt and Leonard Garment, from Charles Alan Wright, dated June 7, 1973. Subject: June 6th meeting with Special Prosecutor. (Document No. 42)

22. Memorandum to J. Fred Buzhardt from Robert R. Andrews, dated June 21, 1973. Subject: Executive Privilege. (Document No. 43)

23. Memorandum to J. Fred Buzhardt and Leonard Garment, from Thomas P. Marinis, Jr., dated June 20, 1973. Subject: Professor Wright's attempt to obtain document. (Document No. 44)

24. Memorandum to J. Fred Buzhardt and Leonard Garment, from Charles Alan Garment (sic), dated June 7, 1973. Subject: June 6th meeting with the Special Prosecutor. (Document No. 46)

25. Draft letter to Senator, from Alexander Haig, dated December 12, 1973. Subject: Response to letter of the 5th. (Document No. 60)

26. Draft Letter to Senator, from Alexander Haig, dated December 12, 1973. Subject: Response to letter of the 5th. (Document No. 61)

27. Proposal re: transcription of tapes, dated October 17, 1973. (Document No. 63)

28. Typed note with handwritten notation: Sent to Buzhardt 12/11/73, undated. Subject: papers Buzhardt sent to Jaworski. (Document No. 66)

29. Chronology—Presidential Statements, Letters, Subpoenas, dated March 12, 1973. Subject: chronology of same. (Document No. 71)

30. Handwritten note, dated 1/31/74 (January 31, 1974). Subject: Duties and responsibilities of Special Prosecutor. (Document No. 82)

31. Memorandum to Fred Buzhardt, from William Timmons, dated 7/30/73 (July 30, 1973). Subject: refusal to release taped conversations. (Document No. 91)

32. Memorandum to Fred Buzhardt, from Paul Trible, dated October 30, 1973. Subject: Cox's diclosure of Kleindienst's confidential communication. (Document No. 92)

33. Proposal regarding transcription of tape conversations, dated 10/17/73 (October 17, 1973). (Document No. 94)

Mr. REID. These clearly indicate that Bolton acknowledged materials would be forthcoming.

The reason these are important is that we have said this man who has no judicial record whatsoever—and I heard the distinguished Presiding Officer give a statement yesterday about the many judges who have been distinguished who have not had judicial experience. We have never debated that. We agree, one does not have to have judicial experience to be a good judge. If that were the case, there would never be any good judges, quite frankly. Somebody has to start someplace. In fact, we would never have judges. That is what is referred to as a red herring.

We have never alleged that Miguel Estrada is disqualified from being a judge because he has not been a judge. That is something that the majority has talked about a lot, but we have never raised that as an issue.

What we have said is that those instances where we can learn something about his political philosophy and his philosophy as it relates to jurisprudence, we need to know something about that. The only place we can go to look is in relation to when he worked at the Solicitor's Office because he has not answered the questions we have asked him about the cases he prepared and took to trial when he was an Assistant Attorney General or when he argued cases before appellate courts.

As I have said on a number of different occasions, I have been to court lots of times. I have represented all kinds of different people. In all the cases I took, when I argued a case before a jury and before a court, one could not find out what my political or judicial philosophy was. The reason was I was being paid to represent somebody and carrying out my responsibilities as a lawyer.

So the fact that he has been before the Supreme Court and other appellate courts and has tried cases adds to someone's capabilities, but it does not allow us to find out about a person who is going to the second highest court in the land, if he passes this test. That is not enough. We need to know something about him. That is the reason we have raised these issues.

One thing my friend from Vermont raised, and I thought it was so good last evening: One does not have to graduate first in their class at Harvard to be a judge, but we heard assertions that Miguel Estrada has graduated first in his class. He has not. But he could graduate last in his class. He went to Harvard, which is one of the top two or three law schools in the entire country. The mere fact he went to Harvard means he is really smart.

He did not graduate first in his class. He was not editor of the Law Review. He was, with 71 other men and women at Harvard, part of the Law Review. He was 1 of 71. That is a pretty large group. As I have indicated, they are all smart.

The fact that he was an editor adds to his qualifications, but do not try to puff him up to make him something that he is not. He was not editor of the Law Review.

I think we are off on a lot of tangents. As Senator HATCH laid out so clearly last night, I think it is tremendous that a man came from Central America when he was 17 years old, went to Columbia University, also a school that is hard to get in, so he must have done well on his tests. I think it is tremendous that he was able then to go to Harvard. But let's not try to make this a rags-to-riches story because it was not. He did well, and that is tremendous. He is an immigrant to this country who has done well academically, but let's not build this up to some kind of a Horatio Alger story as some have said. I think the guy has done very well, and that is commendable. But we have heard all of these assertions that he graduated first in his class and he was editor of the Law Review, which is not true. It does not take away from what a smart man he must be.

We heard a lot last night, with Senators asking questions of Senator HATCH about all the editorials from around the country. Of course, there are lots of editorials that oppose Miguel Estrada. There is no need to read all of them, but I would like to read one from the New York Times. It may only be one newspaper, but the circulation makes up for a lot of smaller newspapers.

This editorial is 411 words long and is entitled ''Full Disclosure for Judicial Candidates.''

The Constitution requires the Senate to give its advise and consent on nominees for federal judgeships. But in the case of Miguel Estrada, the Bush administration's choice for a vacancy on the powerful United States Court of Appeals for the District of Columbia Circuit, the Senate is not being given the records it needs to perform its constitutional role. The Senate should not be bullied into making this important decision in the dark.

Mr. Estrada, who has a hearing before the Senate Judiciary Committee tomorrow, has made few public statements about controversial legal issues. But some former colleagues report that his views are far outside the legal mainstream.

The best evidence of Mr. Estrada's views is almost certainly the memorandums he wrote while working for the solicitor general's office, where he argued 15 cases before the Supreme Court on behalf of the federal government. In these documents, he no doubt gave his views on what position the government should take on cases before the Supreme Court and lower federal courts. Reading them would give the Senate insight into how Mr. Estrada interprets the Constitution, and in what direction he believes the law should head.

There are precedents for this. When Robert Bork was nominated to the Supreme Court in 1987, the Senate was given access to memos prepared while he was solicitor general. The administration has no legal basis for its refusal to supply these documents. Congress has oversight authority over the solicitor general's office, which is part of the Justice Department, and therefore has a right to review its records. Attorney-client privilege and executive privilege are inapplicable for many reasons, including their inability to override the Senate's constitutional duty to investigate fully this judicial nomination.

This is an administration that loves secrecy, on issues ranging from the war in Iraq to Vice President Dick Cheney's energy task force. And it seems to think that if Congress is ignored, it will simply go away. Congress must insist on getting the documents it needs to evaluate Mr. Estrada, and it should not confirm him until it does.

There are three things that can be done and we have been saying this for the 3 weeks we have been on this matter. No. 1, pull the nomination. What does that mean? That means go to something else. No. 2, try to invoke cloture. File a motion to invoke cloture and to do that you need 60 votes. That certainly is within the framework of the Senate for these many years. I also recognize the other way to do this is for Mr. Estrada to come before the Senate and answer the questions that we ask and also supply the memoranda that the New York Times says he should supply. That would be the way to get over this.

We have had now for several days statements made that we should not be on this, that Miguel Estrada is making hundreds of thousands of dollars a year as a lawyer, fully employed at a large law firm here in Washington, DC. We believe that for the many people who are unemployed, the many people who have lost their jobs, 2.8 million during the 2 years of this administration, we should be dealing with those people who are not employed and underemployed people with no health insurance or who are underinsured, people who are trying to make it educationally and otherwise in this society. That is what we should be dealing with. Rather than spending 3 weeks on a man who is fully employed, making hundreds of thousands of dollars a year, we think we should get off this and go to something else.

We are, as has been indicated, here for the duration. If the majority decides they would rather spend the Senate's valuable time on Miguel Estrada, they can do that. But I say that idle time is time we cannot make up later. There is a limited amount of time and a limited amount of legislative days that we have. We could be going to something else.

These filibusters occur very infrequently. I have been here more than two decades now and filibusters are very rare. Once in a while you have to stand for what you believe is right. As the New York Times indicated, we believe we are right.

Now, there was a lot of name calling last night. Both my friend from Colorado and my friend from Tennessee have the absolute right to voice their opinion. I don't think any less of Members for voicing opinions because they disagree with me. I don't think this is the time to name call. We have an actual factual dispute in the Senate. It is now in a procedural bog. We have to figure a way out of this. It should be a debate that is worthy of the traditions of the Senate. That is what this is all about. The Senate traditionally has had debate we read about in our history books. That is what I want the people who read about this debate to see in years to come—not calling each other names, negative in nature but, rather, referring to a person's position as one of conviction.

I listened to the speech of the Presiding Officer who indicated he would wait until next Tuesday to give his maiden speech, but he felt so passionate—that is my word, not his—about this issue that he wanted to give it a few days early. More power to the Senator from Tennessee. That is certainly fine. That is tremendous that the Senator from Tennessee made his speech and he feels strongly about the issue. It does not mean I have to agree with him. But I admire and respect his position.

Everyone on the other side should understand we also have conviction and feel passionately about this issue, and sometimes there are stalemates. This may be one of those. There may be a very tough decision that the majority leader has to make to pull this nomination. If he wants to go through a cloture vote, second cloture vote, a third cloture vote, eat up more time of the Senate, we are here. We are here for the duration. I don't think because we are involved in this debate that people suddenly need to say the Senate will never be the same. Of course it will be the same. We survived the filibuster with the Abe Fortas nomination. We survived that. It was very tough at the time. I watched that from the sidelines. We survived the filibusters conducted against President Clinton's nominees. The problem the Republicans had at that time, they did not have enough votes to stop cloture from being invoked because there were Republicans of good will who decided it was the wrong thing to do. That is good.

The fact there were filibusters and some people felt so strongly is hard to comprehend, but even after the filibuster was ended with the cloture vote then people still moved to postpone that nomination. It went that far.

The Senate survived that. And the Senate will survive this little dustup that is going on here.

The point I am trying to make, let's feel good about other people's positions. You do not have to be mean spirited about someone disagreeing with you. I hope, however long this debate takes, whether it is ended today, Friday, next week, or a month from now, that people will speak well about each other in the Senate and not resort to name calling. That is not good at all.

I hope we can move on to some of the other important issues now facing this country.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Colorado.

Mr. ALLARD. Mr. President, I stand in support of Miguel Estrada, and the need for a vote on his nomination. I listened to the comments of my colleague from Nevada, and I ask myself, what is this debate really about? The debate is about whether a majority of Senators should have the opportunity to voice their opinion through a vote on Miguel Estrada. I, for one, feel like I have adequate information. There is more than a majority of Senators in this body who obviously feel they have adequate information to take a vote on Miguel Estrada.

This filibuster is unprecedented. We have never had a filibuster of this nature before on a circuit court judge up for consideration before this body. I think it is time we recognize that in the Constitution there is an advise and consent provision. Many of us feel the debate has reached the point where enough questions have been asked and now the full body of the Senate is ready to proceed to a vote.

When a judge starts through the nomination process, he is introduced to the Senate through resolution. The nomination goes to the committee. There is also a process where individual Senators can express their concerns through a blue slip process. Then there are hearings and votes in committee, and then the nomination comes to the floor for a vote.

Miguel Estrada has gone through this process. He has even received the highest recommendation from the American Bar Association. That is a body of peers, peers he has done business with on a regular basis, who understand his

record, who know him personally, and who appreciate and respect his professional competence to the point they are willing to give him the highest rating the American Bar Association will give to any nominee.

I think he has a great story. He came to this country with a limited English language ability at the age of 17. He could speak Spanish hardly any English at all. If you come here at 17 and don't know the language and you graduate from a university magna cum laude and then go and serve on the Harvard Law Review—it is simply an outstanding academic accomplishment.

This individual's accomplishments did not stop with graduation; they continued through his professional life. Not just anybody gets to argue before the Supreme Court of the United States. That is a select group of people. So as far as I am concerned, let's simplify this debate, as my colleague suggested. Let's have a vote. That is what we are talking about. Let's just bring up Miguel Estrada for a vote in the Senate. I think it is time. I think a lot of debate has been going on. There are some differences of opinion about things that can be argued about. But if we have a vote, each individual Senator has an opportunity to make up his or her mind as to how they feel, as to whether or not there is enough information, to make up their minds as to whether they think this is the quality of person they would like to have on the DC Court of Appeals.

The assistant Democratic leader suggested there are three ways to resolve this problem. He said we can pull the nomination, file cloture, or submit the nominee to additional questioning. I suggest another: To do what we do for most nominees; that is, have the debate, which we are having and have done, set a time certain for a vote, which the other side simply has refused to do, and then vote up or down. Unfortunately, they are not going to permit that to happen.

Last night I joined a majority of my colleagues to display our unity in support for Miguel Estrada, a display of support that is particularly important in the midst of this Democrat-led filibuster. But last night was more than just a display. It was an attempt to break the logjam, a good will invitation to carry out the Senate's duties as commanded by the advice and consent clause of the Constitution. My colleagues and I gathered here on the floor last night, ready to act. A majority of this body is willing to move forward on the nomination of Miguel Estrada by taking a simple up-or-down vote. That is all we are asking for, a simple up-or-down vote on a nominee who is more than qualified to assume the judgeship of the DC Circuit Court, the second most important court in the United States.

Hoping to proceed, my colleagues and I participated in a dialog with Chairman HATCH, a back-and-forth exchange of questions and answers. I admire, I have to say, the ability and knowledge of Chairman HATCH and his dedication to this cause, especially as it became apparent that we, once again, would be denied the opportunity to vote, held hostage by a game of entrenchment politics.

Every time I hear one of my colleagues address the nomination of Mr. Estrada, I cannot help but to be both impressed and shocked, impressed with the character and integrity, the intellect and principles of Mr. Estrada; and shocked that such a capable man, who has the opportunity to become the first Hispanic judge on the DC Circuit Court, cannot even receive a vote, a simple up-or-down vote.

The majority of my colleagues are ready to move forward on the nomination. We are ready to vote. I cannot cast judgment on those who oppose Mr. Estrada. If they want to vote no, that is their choice. I respect that. It is their right. I understand that. I voted against judges whom I believed were not fit to serve. But it is implausible to think he should be denied a vote entirely.

Newspapers, radio stations, television programs across the country are demanding that the stalemate end, and that the minority party allow the Senate to proceed and to break off a filibuster that could amount to a major shift in constitutional authority.

Last week I spent the Presidents Day recess traveling across the State of Colorado. In every community, big or small, concerned citizens shared their beliefs on the importance of this nomination and the need to provide a vote for Miguel Estrada. They were appalled that we were not moving forward, that their representative in the Senate would not have an opportunity to vote on a very important consideration for the judiciary. Perhaps some disagree on whether he should be confirmed, but they all agree there should be at least a vote, and they agree it should be done without shifting constitutional authority in a manner that imposes a supermajority requirement on all judicial nominations. I am afraid that is where we are headed.

Let me share with you a couple of editorials that ran in Colorado's two major newspapers, one published in the Denver Post, the other appearing in the Rocky Mountain News.

The Denver Post, a paper that endorsed Al Gore in 2000, and by no means an arm of the Republican party, demands that Estrada be given his day in court, that the Senate be provided a vote. The paper confirms the outstanding quality of the nominee, noting that he is a picture book example of an immigrant pursuing the American dream.

The Denver Post also recognizes his outstanding credentials, stating that while he may lack judicial experience, so, too, do a majority of those now sitting on the DC Circuit Court, some of whom were nominated by Presidents Carter and Clinton.

I have a statement here from the editorial in the Denver Post on the posterboard beside me.

The key point is that there should be a vote . . . a filibuster should play no part in the process.

The Rocky Mountain News simply described the Democrats tactics as ''ugly,'' commenting on their attempt to thwart the Senate's majoritarian decisionmaking.

The editorial calls the filibuster:

. . . irresponsible, a hysteria being acted out to keep Estrada from serving on the US Court of Appeals for the District of Columbia.

On the chart I have a quote from both papers highlighting the need to end the filibuster and to proceed to a vote.

The Denver Post:

The key point is that there should be a vote . . . a filibuster should play no part in the process.

The Rocky Mountain News concludes that:

The Democrats have no excuse. Keeping others from voting their consciences on this particular matter is simply out of line.

Editorial boards across the country echo this very same sentiment. More than 60 major newspapers are calling for an end to the filibuster.

I would like to share with my colleagues here this afternoon a few of those. Let me name a few:

The Arkansas Democrat-Gazette; in California, Redding, and The Press Enterprise; The Hartford Courant; The Washington Post; in Florida, The Tampa Tribune and The Florida Times-Union; The Atlanta Journal Constitution and the Augusta Chronicle; the Chicago Tribune in Illinois, along with the Chicago Sun-Times, and Freeport Journal Standard; The Advocate in Baton Rouge, Louisiana; The Boston Herald; The Detroit News and Grand Rapids Press; in New Mexico the Albuquerque Journal; in Nevada, the Las Vegas Review Journal; the Winston-Salem Journal in North Carolina; in North Dakota, the Grand Forks Herald; the Providence Journal in Rhode Island; in West Virginia, the Wheeling News Register/Intelligencer; and nationally, the Investor's Business Daily and the Wall Street Journal.

I would also like to refute one of the arguments being put forward by the Democrats against Mr. Estrada.

For 11 days we have heard statements that the nominee is not qualified to serve because he lacks judicial experience. This standard is simply ridiculous.

Had it applied to their own Democratic nominees, it would have prevented some of the most capable attorney's from being seated on the federal bench.

Under the experience litmus test, the late Justice Byron ''Whizzer'' White, a great Coloradan, who was nominated to the Supreme Court by President John F. Kennedy, would never have been confirmed.

Nor would another great Coloradan, Judge Carlos Lucero, who was nominated by President Bill Clinton to the

Tenth Circuit Court of Appeals, have been confirmed.

To consider a lack of judicial experience as the poison pill of the Estrada nomination while ignoring the confirmation of Democratic nominees Justice White and Judge Lucero, is a double standard of the highest order.

The majority of this body, a majority elected by the American people, is ready to proceed with the nomination of Miguel Estrada.

I have no doubt that the obstructionists have their own reason to vote against the nominee. But they have no reason to prevent a vote entirely.

I hope that my colleagues will realize the danger of the path they have chosen, and will end this course of obstruction.

While I believe a full and fair debate of Presidential nominees is of paramount importance, obstructing an up-or-down vote fails the public trust and is a disservice to our system of justice.

I know how I am going to vote. I am voting for a highly qualified individual. A nominee who the American Bar Association has stated is ''highly-qualified.'' That individual is Miguel Estrada, and he deserves a vote by the United States Senate.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. CLINTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TITLE IX

Mrs. CLINTON. Mr. President, yesterday, the President's Commission on Opportunity in Athletics released its recommendations for Title IX and some of the findings are a haunting reminder of the way things used to be.

It seems that many of the Commissioners believe that men's sports have suffered because of women's programs. They believe that it is okay to count ''slots'' instead of actual women players. And some believe that since men are better ''naturally'' at sports compared to women—that is their word and not mine. That is a true statement if it comes from me, but it is not a true statement when it comes from other women who are more athletically different—and, therefore, men deserve more funding and support. I don't think we should forget that was the excuse used for decades and for generations to keep women out of college, out of math and science classes, and out of the workplace.

I remember as a young girl reading stories of the first women back in the 19th century who wanted to go to medical school to become a doctor or to a law school to become lawyers and who wanted to go to college to further their education. There were court decisions which said women naturally were not suited for higher education. It will wear out their brain. It will undermine their health, and they certainly are not fit to go into the courtroom or into the operating room. Thank goodness we have come a long way from those days.

But I think about it frequently because my mother was born before women could vote. Lest we forget that many of the changes which we now take for granted did not come about just because somebody changed their mind. It is because we had to fight for work and for the kind of progress which we can see all around us.

For 30 years, title IX has encouraged millions of girls and women to participate in sports. In 1972, only 1 out of every 27 women participated in sports. Today, that number is 1 in 2. The program works. I think we should recognize the extraordinary progress we have made.

I remember very well that although I loved playing sports and athletics as a young girl, I was never very good at it. But I played hard, and it was a major influence on my understanding of my abilities, my limits, teamwork, and sportsmanship. It was hard for me to accept the fact that many of my friends and colleagues who were more talented really hit a wall. There were not the kind of interscholastic teams available at the high school level which we now take for granted. There were not scholarships available in most sports for most girls who had the capacity to compete and be good. The colleges were in no way fulfilling the need and desire that young women had to further their athletic pursuits. There really wasn't anything that you could point to as being professional athletic options for extremely well-qualified and motivated women.

I believe passionately that title IX changed the rules on the playing field and opened up the opportunities so more girls and women could see themselves on that field—and create conditions that would encourage our institutions actually to respond to those needs and desires.

I was very pleased to hear last night that Secretary Paige announced he would only consider the recommendations of the Commission that the Commission unanimously agreed upon. And I applaud that announcement.

But I believe that the minority report, which was written by Julie Foudy, the captain and 9-year veteran of the U.S. Women's National Soccer Team, and Donna de Varona, an Olympic swimmer with two gold metals, raises questions about whether any of these recommendations can actually be described as unanimous.

The introduction of the report reads as follows:

After . . . unsuccessful efforts to include . . . our minority views within the majority report, we have reached the conclusion that we cannot join the report of the Commission.

And Julie Foudy and Donna de Varona go on to say:

Our decision is based on our fundamental disagreement with the tenor, structure and significant portions of the content of the Commission's report, which fails to present a full and fair consideration of the issues or a clear statement of the discrimination women and girls still face in obtaining equal opportunity in athletics—

They go on to say:

[secondly,] our belief that many of the recommendations made by the majority would seriously weaken Title IX's protections and substantially reduce the opportunities to which women and girls are entitled under current law; and, [third,] our belief that only one of the proposals would address the budgetary causes underlying the discontinuation of some men's teams, and that others would not restore opportunities that have been lost.

Their goal in issuing this minority report was to make sure it was included in the official record of the Commission. Unfortunately, it is my understanding that the Secretary of Education today has refused to include the minority report. I think that is fundamentally unfair. To me, that report should belong with the majority report, especially since those two women, probably between them, have more direct personal experience in what athletics can mean to a woman's life and what it was like before IX, when Donna was competing, and what it was like after IX was enacted, when Julie helped to lead our women's soccer team to the World Cup Championship.

Therefore, Mr. President, I am going to ask unanimous consent to have printed in the RECORD this minority report. I am doing so because I believe it is important that on this issue we hear from the people who have the most to lose: women athletes, women students. Julie and Donna were invited to join the Commission to represent that point of view, and their voices should be heard. For the information of my colleagues, the minority report can be found at http://www.womensportsfoundation.org/binary-data/WSF—Article/pdf—file/944.pdf.

Now, along with my colleagues, Senator DASCHLE, Senator KENNEDY, Senator MURRAY, Senator SNOWE, and Senator STEVENS, who care so deeply about this issue, we will continue to keep a watchful eye on the Department of Education because the truth is, they do not need permission from the Commission or anyone else to adopt the changes the Commission has proposed; they can propose to change the regulations or offer guidance at any time.

So I am here today in the Chamber to say that I, and many of my colleagues on both sides of the aisle—men and women alike; athletes and nonathletes alike—will fight to protect title IX for our daughters and our granddaughters and generations of girls and women to come.

But let me also add, my support of title IX and my support of the right of the minority to be heard with respect to the Commission's recommendations does not, in any way, suggest that I do not believe in the importance of sports for young men, because I do. I strongly support sports for all young people.

In fact, I think it is very unfortunate that physical education has been dropped from so many of our schools, that so many of our youngsters not only do not have the opportunity to discharge energy and engage in physical activities, but to learn about sports, to find out that maybe something would inspire their passion and their commitment.

There are other ways to ensure that all boys and girls, all men and women have the opportunity for athletic experiences, to participate on teams.

I was somewhat distressed, when the Commission was appointed, with the number of Commissioners who represented an experience that is not the common experience; namely, the experience of very high stakes, big college and university football, which of course is important; I very much believe that. But that is only one sport, and it is a very expensive sport.

I think there are ways, without taking anything away from anyone—boys, girls, men, women—that we can listen to the voices of experience, such as Julie's and Donna's, and come to recognize that there may be other reasons, besides the law, that some men's teams have been discontinued, which I am very sorry about and wish did not have to happen and believe should not have happened if there had been a fairer allocation of athletic resources across all sports.

So I think we can come to some agreements that would serve perhaps to create additional opportunities, but we should not do it to the detriment of girls and women.

I appreciate the opportunity to come to the floor to recognize this very important piece of legislation which has literally changed the lives of girls and women and should continue to do so. What we ought to be doing is looking for ways we can enhance the physical activity, the athletic, competitive opportunities of boys and girls.

One of the biggest problems we have confronting us now is obesity among young people. We need to get kids moving again. We need to get them in organized physical education classes, intramural sports, interscholastic sports, afterschool sports, and summer sports, so they can have an opportunity to develop their bodies and their athletic interests, as well as their minds and their academic pursuits.

Mr. KYL. Mr. President, also, for the information of my colleagues, ''Open to All,'' the report of the Secretary of Education's Commission on Opportunity in Athletics can be found at http://ed.gov/pubs/titleixat30/index.html.

HOMELAND SECURITY

Mrs. CLINTON. Now, Mr. President, on another issue that is of deep concern to me, I come also to raise questions about our commitment to homeland security. This is something I have come to this Chamber to address on numerous occasions, starting in those terrible days after September 11, 2001. And it is an issue I will continue to address in every forum and venue that I possibly can find because, unfortunately, I do not believe we have done enough to protect ourselves here at home.

On February 3, Mitch Daniels, the Director of the Office of Management and Budget, said:

> There is not enough money in the galaxy to protect every square inch of America and every American against every conceived threat.

This statement bothered me at the time. It has continued to bother me. I suppose, on the face of it, it is an accurate statement. Not only isn't there enough money in the United States, the world, or the galaxy to protect every square inch, but what kind of country would we have if we were trying to protect every square inch? That would raise all sorts of issues that might possibly change the character and quality of life here in America.

But I do not think that is what really motivated the statement. The statement was a kind of excuse, if you will, as to why this administration has consistently failed to provide even the rudimentary funding that we have needed for our first responders and to deal with national security vulnerabilities.

We have learned, in the last few months, that threats do exist all over our country. It is not just New York City or Washington, DC, that suffered on September 11. We know that in the months since then, we have seen many other parts of our country respond to alerts—our latest orange alert—which have required huge expenditures of resources in order to protect local water supplies, bridges, chemical plants, nuclear powerplants, to do all that is necessary to know that we have done the best we can.

Life is not certain. There is no way any of us knows where we will be in an hour or in a day or in a year. But what we try to do is to plan for the worst, against contingencies that might undermine our safety. And then we have to just hope and trust and have faith that we have done enough. But if we do not try, if we do not make the commitment, if we do not provide the resources, then we have essentially just put up our hands and surrendered to what did not have to be the inevitable.

When I heard Mr. Daniels make that comment, I thought to myself, if you had made a list of every community in America that might possibly be a site for an al-Qaida terrorist cell, I am not sure that Lackawanna, NY, would have made that list. It is a small community outside of Buffalo where the FBI, in cooperation with local law enforcement, uncovered such a cell of people who had gone to Bin Laden's training camps in Afghanistan and then come back home, most likely what is called a sleeper cell. Their leader was in Yemen where one of our predator aircraft found him and took action against him and his compatriots who are part of the al-Qaida terrorist campaign against us. If we were just thinking, where should we put money to protect ourselves, I am not sure Lackawanna, NY, would have been on that list. Yet we have reason to believe it should be on any list anywhere. Just yesterday four men in Syracuse, NY, were accused of sending millions of dollars to Saddam Hussein.

I don't know that we can sit here in Washington and say: Well, we can't possibly protect everybody so we shouldn't protect anybody. But that seems to be the attitude of this administration. That is what concerns me most. We should be doing everything we possibly can to make our country safer. We should be thinking 24 hours a day, 7 days a week about new steps, smart steps that we should be taking. Why? Because that is what our enemies do when they think about how to attack us. If somebody is on CNN or the Internet, it doesn't stop at our borders. That is viewed and analyzed in places all over the world. We know that they are working as hard as they possibly can to do as much harm to us and our way of life as they possibly can.

Since September 11, our first responders, our mayors, police and fire chiefs have said over and over again they need Federal support so they can do their jobs to protect the American people. During this recent code orange alert, they have done a remarkable job. They have responded to their new responsibility as this country's frontline soldiers in the war against terrorism with grace, honor, and a dedication that Washington should emulate.

We have had the opportunity to do so. We could have already had in the pipeline and delivered more dollars to pay for needed training, personnel, overtime costs, equipment, whatever it took as determined by local communities that they require to do the job we expect them to do. But every time the Senate has tried to do more for our first responders, the administration and some in Congress have said we should do less.

Senator BYRD stood right over there last summer and offered an amendment, which the Senate supported, that would have provided more than $5.1 billion in homeland security funding. It included $585 million for port security; $150 million to purchase interoperable radio so that police, firefighters and emergency service workers can communicate effectively, a problem we found out tragically interfered with communication on September 11 in New York City; another $83 million to protect our borders. But in each case, despite having passed it in the Senate, the administration and Republican leaders settled for far less. They called such spending ''unnecessary.'' In some cases, such as the funding for interoperable radios, not only did we not get the increase to buy this critical equipment, the funding was cut by $66 million.

It was during that debate that we needed the administration's support. But instead, they opposed such efforts,

and the President himself refused to designate $5.1 billion last August as an emergency to do the kinds of things that mayors and police chiefs and fire chiefs and others have been telling me and my colleagues they desperately need help doing.

The paper today says the President acknowledges we need to do more. I welcome that acknowledgment. But I have learned that we have to wait to see whether the actions match the words. We have to make sure this new awareness about having shortchanged homeland security doesn't translate into taking money away from the functions that firefighters and police officers are called upon to do every day, transferring it across the government ledger, relabeling it counterterrorism, and wiping our hands of it and saying: We did it.

That just doesn't add up. That is what they tried to do for the last year, take money away from the so-called COPS program, which put police on the beat onto our streets, which helped to lower the crime rate during the 1990s, taking money away from the grants that go to fire departments to be well prepared to get those hazardous materials, equipment, and suits that will protect them and claiming that we take that money away, we put it over here, and we say we have done our job. That is just not an appropriate, fair-minded response.

We cannot undo the past, but every day we don't plan for the future is a lost day. I don't ever want to have a debate in the Senate about what we should have done or we could have done or we would have done to protect ourselves, if only we had taken as seriously our commitment to homeland security as the administration takes our commitment to national security.

Last month I issued a report about how 70 percent of the cities and counties in New York are not receiving any Federal homeland security funding. I commissioned this study because I wanted to know for myself whether maybe some money had trickled down into their coffers that I was not aware of. Well, 70 percent say they had gotten nothing; 30 percent say they had gotten a little bit of the bioterrorism money that we had appropriated. But then I also asked them, how much did they need and what did they need it for and how did they justify their needs. And I must say, most of the requests were very well thought out, prudent requests for help that in this time of falling revenues and budget crunches, city and county governments just cannot do themselves.

When that orange alert went out a week or so ago, what happened? I know in New York City, if you were there, you would have seen an intense police presence because our commissioner of police, our mayor, knew they had to respond. They had to get out there and keep a watchful eye. But there was no help coming from Washington for them to do that. It may be a national alert, but it is a local response. And we are not taking care of the people we expect to make that response for us.

Then I was concerned to see that in so many of the discussions of potential weapons of mass destruction, doctors and nurses and hospital administrators are saying: We are not ready. We do not have the funding. We don't even have the funding to do the preventive work, the smallpox vaccination. We don't have the means to be ready for some kind of chemical or biological or radiological attack.

When we had the incident a few months ago of the shoulder-fired missile that was aimed at the Israeli airline in Kenya—thankfully it missed—I called the people in the new Department of Homeland Security. I said: What are our plans? How do we respond to the threat posed by shoulder-fired missiles?

The response I got back was: Well, that is a local law enforcement responsibility.

Are we going to provide more funding so we can have more police patrols on the outskirts of large airports similar to the ones we have in New York and other States have?

Well, no, that is not in the cards. You just go out there and keep an eye out for those shoulder-fired missiles.

Time and time again we hear about a threat. We hear the conversations from our government officials. We listen to the experts tell us what we have to be afraid of. And if you are a police chief or a fire chief sitting in any city in our country, you are sitting there in front of the television set saying to yourself: My goodness, how am I going to protect my people? How am I possibly going to do the work I need to do when my State budget is being cut, when my local budget is being cut, when the Federal budget is not providing me any resources? How am I going to do that?

It is a fair question. Yet when we dial 911, we expect that phone to be answered, not in this Chamber, not down at the other end of Pennsylvania Avenue in the White House, but right in our local precinct and our local firehouse. Yet in place after place around America, we read stories about police being laid off or being enticed into early retirement to save money, firehouses being closed or firefighters being encouraged to take early retirement, not filling classes in the police and fire academy.

There is something wrong with this picture. Now, we have done all we know to do to give our men and women who wear military uniforms every bit of support we believe they need. If we are going to put them in harm's way, then we owe it to them, to their families, to equip them and train them, and give them the best possible protection so they can fulfill their mission without harm to themselves.

But this is a two-front war. We hear that all the time. My gosh, there is nothing else coming across the airwaves except about what is happening in the Persian Gulf and on the Korean peninsula and what is happening with al-Qaida. We know we are in a global war against terror and against weapons of mass destruction. That is good offense. We need to be out there trying to rid the world of weapons of mass destruction, rid the world of tyrants and dictators who would use such weapons.

But what about defense? What about what happens here at home? We have not done what we need to do to protect our homeland or our hometowns. That is absolutely unacceptable. The one thing we have learned from the horrors of September 11 is that in this new globalization of transportation and information we now live in, boundaries mean very little. Part of the reason we were immune from attack through many decades—with the exception of Pearl Harbor and the attack on this city and on Baltimore in the War of 1812—is we were protected by those big oceans, and with friendly neighbors to the north and south. But those days are gone. You can get on a jet plane from anywhere. You can be in a cave in Afghanistan and use your computer. You can transfer information about attacks and about weapons of mass destruction with the flick of a mouse.

So we have to upgrade and transform our homeland defense, just as we have to think differently about our military readiness and capacity. This does not come cheaply. This is not easy to do. I spend a lot of time talking with police, firefighters, hospital administrators, and front line doctors and nurses; they are ready to make the sacrifice to perform in whatever way they are expected to do so to protect us. But we are not giving them the help they need.

Now, we can remedy this. It was a good sign when the President admitted today that he and his administration have not funded homeland security, and I am glad to hear they have finally admitted that. But now we have to do something about that admission. It cannot be just a one-day headline. We have to figure out, OK, now that you are seeing what we see, what we have been worried about, let's do something. Let's make sure that whatever budget is sent up here has money in it for these important functions, so we can look in the eyes of our police officers, firefighters, and emergency providers, and say we have done the best we know how to do.

That doesn't mean we are 100 percent safe. There is no such thing. That is impossible. That is not something we can possibly achieve. But we have to do the best we can. I believe it is probably a good old adage to ''hope for the best, but prepare for the worst.'' When you have done all you knew how to do, when something does happen, hopefully, you are prepared to deal with it.

From my perspective, Mr. President, this is a national priority that cannot wait. Many of the commentators and pundits of the current theme talk about the likely military action necessitated by Saddam Hussein's refusal to

disarm, and point to the possibility that such action will trigger an upsurge in potential attack not only here at home but on American assets and individuals around the world. It would be impossible to write any scenario about the next 10 years without taking into account the potential of future terrorism.

But what is not impossible—in fact, what is absolutely necessary—is for us to be able to say to our children and the children of firefighters and police officers and emergency responders that we did all we knew to do; we were as prepared as we possibly could be. That is what I want to be able to say, and I know we cannot do that without the resources that will make it a real promise of security, instead of an empty promise.

So, Mr. President, it is my very strong hope that in the wake of the administration's recognition of the failure thus far to fund homeland security, now we can get down to business; that we not only can fund it, but do it quickly, get the money flowing, and get local communities ready to implement it, and we can get about the business of making America safer here at home. I will do everything I can to realize that goal. I look forward to working with my colleagues on both sides of the aisle as we provide the kind of homeland security Americans deserve.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PRYOR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SUNUNU). Without objection, it is so ordered.

Mr. PRYOR. Mr. President, I ask unanimous consent that I be permitted to speak in morning business for up to 25 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The Senator from Arkansas is recognized.

(The remarks of Mr. PRYOR are printed in today's RECORD under ''Morning Business.'')

Mr. SUNUNU. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, I rise once again to speak in support of the confirmation of Miguel Estrada, an exceptionally well qualified nominee who does not deserve to have his nomination obstructed by this filibuster. I have been a strong supporter of Mr. Estrada's since he came before the Judiciary Committee last year. At that time, I argued that his nomination should come up for a floor vote, but we were not allowed to vote on his nomination then. Here we are a year later, and I am still strongly supporting Mr. Estrada, and I am still arguing for a floor vote, and that vote is still being refused. I think it is shameful to continue holding up the vote on this very qualified judicial nominee, who, by the way, will make an excellent member of the US Court of Appeals for the DC Circuit.

I know my colleagues heard Mr. Estrada's credentials many times last week. In fact, I am pretty sure that some of my colleagues could quote his credentials in their sleep. However, I think it is important that the Senate is reminded of how qualified this nominee is who is being filibustered. Not only is he regarded as one of the Nation's top appellate lawyers, having argued 15 cases before the Supreme Court of the United States, but the American Bar Association, which I think Democrats consider the gold standard of determination of the person's qualifications to be a judicial nominee, has given him a unanimous rating of, in their words, ''well qualified.'' This happens to be the highest American Bar Association rating. It is a rating they would not give to just any lawyer who comes up the pike. According to the American Bar Association, quoting from their standard:

> To merit a rating of well qualified, the nominee must be at the top of the legal profession in his or her legal community, having outstanding legal ability, breadth of experience, the highest reputation for integrity and either have demonstrated or exhibited the capacity for judicial temperament.

We ought to demand that more qualified people like Miguel Estrada be appointed to the bench rather than fighting his nomination.

As my colleagues know, I am not a lawyer. There is nothing wrong with going to law school, but I did not. I have been on the Judiciary Committee my entire time in the Senate. I know some of the qualifications that are needed to be a Federal judge, particularly a Federal judge on this DC Circuit that handles so many appeals from administrative agencies and is often considered, by legal experts, to be the second highest court of our land.

Mr. Estrada's academic credentials are stellar. He graduated from Columbia University with his bachelor's degree magna cum laude and was also a member of Phi Beta Kappa. Then he earned his juris doctorate from Harvard University, also magna cum laude, where he was editor of the Harvard Law Review. Mr. Estrada did not just attend Harvard Law School; he graduated with honors. He also served as the editor of the Harvard Law Review. To be selected as the editor of a law review is a feat that only the most exceptional of law students attain.

While Mr. Estrada certainly has the intellect required to be a Federal judge, his professional background also gives testament to his being qualified for a Federal Court of Appeals judgeship as opposed to just any judgeship.

After law school, Mr. Estrada served as a law clerk to the Second Circuit Court of Appeals and as a law clerk to Justice Kennedy, on the United States Supreme Court. Subsequently, he served as an Assistant US Attorney and deputy chief of the appellate section of the US Attorney's Office of the Southern District of New York, and then as assistant to the Solicitor General of the United States of America.

Mr. Estrada has been in the private sector as well. He is a partner with the Washington, DC, office of the law firm of Gibson, Dunn & Crutcher. In this exceptional career, Mr. Estrada has argued 15 cases before the United States Supreme Court. He won nine of those cases. Mr. Estrada is not just an appellate lawyer; he is one of the top appellate lawyers in the country. So for a young lawyer, I think I can give my colleagues a person who can truly be labeled an American success story. In fact, instead of degrading his ability to serve as a circuit court judge, we should all be proud of Mr. Estrada's many accomplishments.

This is the nominee that the Democrats are filibustering. I fail to understand why a nominee of these outstanding qualifications, and who has been honored by the ABA with its highest rating, would be the object of such obstruction. In all my years on the Judiciary Committee—and that has been my entire tenure in the Senate—Republicans never once filibustered a Democratic President's nominee to the Federal bench. There are many I may have wanted to filibuster, but I did not do it—we did not do it—because it is not right.

In fact, as I understand it, in the entire history of the Senate neither party has ever filibustered a judicial nominee. Going back over 200 years, Republicans and Democrats have resisted the urge to obstruct a nominee by filibustering. Good men of sound judgment have come to the conclusion that to use this tool of last resorts to obstruct a nomination is, at best, inappropriate, and, at worst, just down right wrong.

This nominee, like all nominees, deserves an up-or-down vote. Anything less is absolutely unfair. I hope my colleagues on the other side of the aisle will reconsider this filibuster. The Senate should not cross this Rubicon and establish new precedent for the confirmation process.

Over 40 newspapers from across the country have published editorials advocating that the Senate give Mr. Estrada a vote. Even the Washington Post, which is not exactly a bastion of conservatism, published an editorial last week entitled, ''Just Vote.'' In that editorial, the Post correctly characterized the Democrats obstructionist efforts. With regard to the Democrat request for the internal memos Mr. Estrada drafted while he was in the Solicitor General's Office, the Post said

that this filibuster of Mr. Estrada goes beyond the normal political confirmation games, because,

Democrats demand, as a condition of a vote, answers to questions that no nominee should be forced to address—and that nominees have not previously been forced to address.

I agree with the Post:

It's long past time to stop these games and vote.

I make a unanimous consent request that this Washington Post editorial, ''Just Vote'' be printed in the RECORD after my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

[See exhibit 1.]

Mr. GRASSLEY. Those denying the Senate an up-or-down vote on Mr. Estrada's nomination claim that he has not answered questions or produced documentation, and so he should not be confirmed to the Federal bench. I can think of a number of Democratic nominees who did not sufficiently answer question that I submitted to them, but that did not lead me to filibuster. As far as I know, Mr. Estrada has answered all questions posed to him by the Judiciary Committee members.

His opponents claim that he has refused to hand over certain in-house Justice Department memoranda. What actually is happening is that the Democrats on the Judiciary Committee have requested that the Department of Justice submit to the Committee, internal memoranda written by Miguel Estrada when he was an attorney in the Solicitor General's Office. These internal memos are attorney work product, specifically appeal, certiorari, and amicus memoranda, and the Justice Department has rightly refused to produce them.

The Department of Justice has never disclosed such sensitive information in the context of a Court of Appeals nomination. These memoranda should not be released, because they detail the appeal, certiorari and amicus recommendations and legal opinions of an assistant to the Solicitor General. This is not just the policy of this administration, the Bush administration, a Republican administration. This has also been the policy under Democratic Presidents.

The inappropriateness of this request prompted all seven living former Solicitors General to write a bipartisan letter to the Committee to express their concern regarding the Committee's request and to defend the need to keep such documents confidential. The letter was signed by Democrats Seth Waxman, Walter Dellinger, Drew Days III and Republicans Ken Starr, Charles Fried, Robert Bork and Archibald Cox. The letter notes that when each of the Solicitors General made important decisions regarding whether to seek Supreme Court review of adverse appellate decisions and whether to participate as amicus curiae in other high profile cases, they:

relied on frank, honest and thorough advice from [their] staff attorneys like Mr. Estrada . . .

and that the open exchange of ideas which must occur in such a context

Simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure.

The letter concludes that

Any attempt to intrude into the Office's highly privileged deliberations would come at a cost of the Solicitor General's ability to defend vigorously the United States litigation interests, a cost that also would be borne by Congress itself.

The Democratic committee member's request has even drawn criticism from the editorial boards of the Washington Post and Wall Street Journal. On May 28, 2002, in an editorial entitled ''Not Fair Game'' the Washington Post editorialized that the request

For an attorney's work product would be unthinkable if the work had been done for a private client. . . . [and] legal advice by a line attorney for the federal government is not fair game either.

According to the Post editorial

. . . In elite government offices such as that of the solicitor general, lawyers need to speak freely without worrying that the positions they are advocating today will be used against them if they ever get nominated to some other position.

On May 24, 2002, the Wall Street Journal in an editorial entitled ''The Estrada Gambit'' also criticized the request, calling it ''one more attempt to delay giving Mr. Estrada a hearing and a vote.'' The Journal further criticized the Committee's request in a later editorial, entitled ''No Judicial Fishing'', calling the request ''outrageous'' and noting that the goal of the request ''is to delay, trying to put off the day when Mr. Estrada takes a seat on the D.C. Circuit Court of Appeals.''

Mr. President, I ask unanimous consent that these two editorials also be printed in the RECORD after my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

[See exhibit 2.]

Mr. GRASSLEY. Mr. Estrada is not the only former deputy or assistant to the Solicitor General nominated to the Federal bench. In fact, there are seven others now serving on the Federal Courts of Appeals. None had any prior judicial experience, and the committee did not ask the Justice Department to turn over any confidential internal memoranda those nominees prepared while serving in the Solicitor General's Office. The seven nominees were: Samuel Alito on the 3rd Circuit, Danny Boggs on the 6th Circuit, William Bryson and Daniel Friedman on the Federal Circuit, Frank Easterbrook and Richard Posner on the 7th Circuit, and A. Raymond Randolph on the D.C. Circuit. Why should Mr. Estrada be treated any differently?

During Mr. Estrada's hearing, Judiciary Committee Democrats alleged that the committee has reviewed the work product of other nominees, including memos written by Frank Easterbrook, by Chief Justice Rehnquist when he served as a clerk to Justice Jackson, and by Robert Bork when he was an official at the Justice Department.

For the record, there is no evidence that the Department of Justice ever turned over confidential memoranda prepared by Frank Easterbrook when he served in the Solicitor General's Office. There also is no evidence that the committee even requested such information.

During Robert Bork's hearings, the Department did turn over memos Judge Bork wrote while serving as Solicitor General, but none of these memos contained the sort of deliberative materials requested of Mr. Estrada and the Justice Department. The Bork materials include memos containing Bork's opinions on such subjects as the constitutionality of the pocket veto, and on President Nixon's assertions of executive privilege and his views of the Office of Special Prosecutor. None of the memos contain information regarding internal deliberations of career attorneys on appeal decisions or legal opinions in connection with appeal decisions. Moreover, the Bork documents reflected information transmitted between a political appointee, namely the Solicitor General, and political advisors to the President, rather than the advice of a career Department of Justice attorney to his superiors, as is the case with Mr. Estrada.

You see, the Judiciary Committee has never requested and the Department of Justice has never agreed to release the internal memos of a career line attorney. To ask that Mr. Estrada turn over his memos is unprecedented, and frankly unfair. No Member of this body would ever condone a request to turn over staff memos. What my staff communicates to me in writing is internal and private. I am sure every other Senator feels the same way as I do. This Democrat fishing expedition needs to stop. Miguel Estrada is a more than well qualified nominee and he deserves a vote on his nomination, today.

In conclusion, we are again seeing an attack on another very talented, very principled, highly qualified legal mind. It all boils down to this, Mr. Estrada's opponents refuse to give him a vote because they say they do not know enough about him. They further contend that the Justice Department memos, which they know will never be released, are the only way they can find out what they need to know about Mr. Estrada. It is a terrible Catch–22.

These obstructionist efforts are a disgrace and an outrage. We must put a stop to these inappropriate political attacks and get on with the business of confirming to the Federal bench good men and women who are committed to doing what judges should do, interpret law as opposed to making law from the bench, because it is our responsibility to make law as members of the legislative branch.

I yield the floor.

EXHIBIT 1

[From the Washington Post, Feb. 18, 2003]

JUST VOTE

The Senate has recessed without voting on the nomination of Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit. Because of a Democratic filibuster, it spent much of the week debating Mr. Estrada, and, at least for now, enough Democrats are holding together to prevent the full Senate from acting. The arguments against Mr. Estrada's confirmation range from the unpersuasive to the offensive. He lacks judicial experience, his critics say—though only three current members of the court had been judges before their nominations. He is too young—though he is about the same age as Judge Harry T. Edwards was when he was appointed and several years older than Kenneth W. Starr was when he was nominated. Mr. Estrada stonewalled the Judiciary Committee by refusing to answer questions—though his answers were similar in nature to those of previous nominees, including many nominated by Democratic presidents. The administration refused to turn over his Justice Department memos—though no reasonable Congress ought to be seeking such material, as a letter from all living former solicitors general attests. He is not a real Hispanic and, by the way, he was nominated only because he is Hispanic—two arguments as repugnant as they are incoherent. Underlying it all is the fact that Democrats don't want to put a conservative on the court.

Laurence H. Silberman, a senior judge on the court to which Mr. Estrada aspires to serve, recently observed that under the current standards being applied by the Senate, not one of his colleagues could predictably secure confirmation. He's right. To be sure, Republicans missed few opportunities to play politics with President Clinton's nominees. But the Estrada filibuster is a step beyond even those deplorable games. For Democrats demand, as a condition of a vote, answers to questions that no nominee should be forced to address—and that nominees have not previously been forced to address. If Mr. Estrada cannot get a vote, there will be no reason for Republicans to allow the next David S. Tatel—a distinguished liberal member of the court—to get one when a Democrat someday again picks judges. Yet the D.C. Circuit—and all courts, for that matter—would be all the poorer were it composed entirely of people whose views challenged nobody.

Nor is the problem just Mr. Estrada. John G. Roberts Jr., Mr. Bush's other nominee to the D.C. Circuit, has been waiting nearly two years for a Judiciary Committee vote. Nobody has raised a substantial argument against him. Indeed, Mr. Roberts is among the most highly regarded appellate lawyers in the city. Yet on Thursday, Democrats invoked a procedural rule to block a committee vote anyway—just for good measure. It's long past time to stop these games and vote.

EXHIBIT 2

[From the Wall Street Journal, May 24, 2002]

THE ESTRADA GAMBIT

Senate Judiciary Chairman Patrick Leahy keeps saying he's assessing judicial nominees on the merits, without political influence. So why does he keep getting caught with someone else's fingerprints on his press releases?

The latest episode involves Miguel Estrada, nominated more than a year ago by President Bush for the prestigious D.C. Circuit Court of Appeals. Mr. Estrada scares the legal briefs off liberal lobbies because he's young, smart and accomplished, having served in the Clinton Solicitor General's office, and especially because he's a conservative Hispanic. All of these things make him a potential candidate to be elevated to the U.S. Supreme Court down the road.

Sooner or later even Mr. Leahy has to grant the nominee a hearing, one would think. But maybe not, if he keeps taking orders from Ralph Neas at People for the American Way. On April 15, the Legal Times newspaper reported that a ''leader'' of the anti-Estrada liberal coalition was considering ''launching an effort to obtain internal memos that Estrada wrote while at the SG's office, hoping they will shed light on the nominee's personal views.''

Hmmm. Who could that leader be? Mr. Neas, perhaps? Whoever it is, Mr. Leahy seems to be following orders, because a month later, on May 15, Mr. Leahy sent a letter to Mr. Estrada requesting the ''appeal recommendations, certiorari recommendations, and amicus recommendations you worked on while at the United States Department of Justice.''

It's important to understand how outrageous this request is. Mr. Leahy is demanding pre-decision memorandums, the kind of internal deliberations that are almost by definition protected by executive privilege. No White House would disclose them, and the Bush Administration has already turned down a similar Senate request of memorandums in the case of EPA nominee Jeffrey Holmstead, who once worked in the White House counsel's office.

No legal fool, Mr. Leahy must understand this. So the question is what is he really up to? The answer is almost certainly one more attempt to delay giving Mr. Estrada a hearing and vote. A simple exchange of letters from lawyers can take weeks. And then if the White House turns Mr. Leahy down, he can claim lack of cooperation and use that as an excuse to delay still further.

Mr. Leahy is also playing star marionette to liberal Hispanic groups, which on May 1 wrote to Mr. Leahy urging that he delay the Estrada hearing until at least August in order to ''allow sufficient time . . . to complete a thorough and comprehensive review of the nominee's record.'' We guess a year isn't adequate time and can only assume they need the labor-intensive summer months to complete their investigation. (Now there's a job for an intern.) On May 9, the one-year anniversary of Mr. Estrada's nomination. Mr. Leahy issued a statement justifying the delay in granting him a hearing by pointing to the Hispanic group's letter.

These groups, by the way, deserve some greater exposure. They include the Mexican American Legal Defense and Educational Fund as well as La Raza, two lobbies that claim to represent the interests of Hispanics. Apparently they now believe their job is to help white liberals dig up dirt on a distinguished jurist who could be the first Hispanic on the U.S. Supreme Court.

The frustration among liberals in not being able to dig up anything on Mr. Estrada is obvious. Nam Aron, president of the Alliance for Justice, told Legal Times that ''There is a dearth of information about Estrada's record, which places a responsibility on the part of Senators to develop a record at his hearing. There is much that he has done that is not apparent.'' Translation: We can't beat him yet.

Anywhere but Washington, Mr. Estrada would be considered a splendid nominee. The American Bar Association, whose recommendation Mr. LEAHY one called the ''gold standard by which judicial candidates have been judged,'' awarded Mr. Estrada its highest rating of unanimously well-qualified. There are even Democrats, such as Gore advisor Ron Klaim, who are as effusive as Republicans singing the candidate's praises.

When Mr. Estrada worked in the Clinton-era Solicitor General's office, he wrote a friend-of-the-court brief in support of the National Organization of Women's position that anti-abortion protestors violated RICO. It's hard to paint a lawyer who's worked for Bill Clinton and supported NOW as a right-wing fanatic.

We report all of this because it reveals just how poison judicial politics have become, and how the Senate is perverting its advise and consent power. Yesterday the Judiciary Committee finally to help fellow Pennsylvania Brooks Smith.

Mr. Estrada doesn't have such a patron, so he's fated to endure the delay and documentfishing of liberal interests and the Senate Chairman who takes their dictation.

Ms. MIKULSKI. Mr. President, I rise in opposition to the nomination of Miguel Estrada to the United States Circuit Court of Appeals for the District of Columbia.

The President has the right to make judicial nominations. The Senate has the Constitutional responsibility to advise and consent. I take this responsibility very seriously. This is a lifetime appointment for our nation's second most important court. Only the Supreme Court has a greater impact on the lives and rights of every American.

The District of Columbia Circuit is the final arbiter on many cases that the Supreme Court refuses to consider. That means it's responsible for decisions on fundamental constitutional issues involving freedom of speech, the right to privacy and equal protection.

In addition, the D.C. Circuit has special jurisdiction over Federal agency actions. That means the D.C. Circuit is responsible for cases on issues of great national significance involving labor rights, affirmative action, clean air and clear water standards, health and safety regulations, consumer privacy and campaign finance. The importance of this court highlights the importance of placing skilled, experienced and moderate jurists on the court.

I base my consideration of each judicial nominee on three criteria: competence, integrity and commitment to core Constitutional principles.

I don't question Mr. Estrada's character or competence. He is clearly a skilled lawyer. Yet the Senate does not have enough information to judge Mr. Estrada's commitment to core Constitutional principles.

He has refused to answer even the most basic questions during his hearing in Senate Judiciary Committee. For example, he was asked to give examples of Supreme Court decisions with which he disagreed. He refused to answer. He was asked basic questions on his judicial philosophy. He refused to answer.

The Constitution gives the Senate the responsibility to advise and consent on judicial nominations. This consent should be based on rigorous analysis. The nominee doesn't have to be an academic with a paper trail. Yet the nominee must be open and forthcoming. He or she must answer questions that seek to determine their commitment to core Constitutional principles.

This is a divisive nomination—at a time when our Nation should be united. Our Nation is preparing for a possible war in Iraq. We are already engaged in a war against terrorism. We are also facing a weak economy. Americans are stressed and anxious. The Senate should be working to reduce this stress—to make America more secure; to strengthen our economy and to deal with the ballooning cost of health care.

I urge the administration to nominate judicial candidates who are moderate and mainstream—and to instruct those nominees to be forthright and forthcoming with the Senate so the Senate can address the significant issues that face our Nation today.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Oklahoma.

Mr. NICKLES. Madam President, I ask unanimous consent to proceed as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. NICKLES pertaining to the introduction of S. 2 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, one of our most important responsibilities as Senators is the confirmation of Federal judges. Federal judges are appointed for life, and they will be interpreting laws affecting the lives of all our citizens for many years to come. Yet my colleagues across the aisle suggest that something far less than a full review of a nominee's record is warranted. Republican Senators pretend that by seeking additional information to help us understand Mr. Estrada's views and judicial philosophy, we are upsetting the proper constitutional balance between the Senate and the executive branch. They claim the Senate has to consent to the President's judicial nominees, as long as they have appropriate professional qualifications.

In fact, the Constitution gives a strong role to the Senate in evaluating nominees. The role of the Senate is fundamental to the basic constitutional concept of checks and balances at the heart of the Federal Government. And when we say ''check'' we don't mean blank check.

The debates over the drafting of the Constitution tell a great deal about the proper role of the Senate in the judicial selection process. Both the text of the Appointments Clause of the Constitution and the debates over its adoption make clear that the Senate should play an active and independent role in selecting judges.

Given recent statements by Republican Senators, it is important to lay out the historical record in detail. The Constitutional Convention met in Philadelphia from late May until mid-September of 1787. On May 29, 1787, the Convention began its work on the Constitution with the Virginia Plan introduced by Governor Randolph, which provided ''that a National Judiciary be established, to be chosen by the National Legislature.'' Under this plan, the President had no role at all in the selection of judges.

When this provision came before the Convention on June 5, several members were concerned that having the whole legislature select judges was too unwieldy. James Wilson suggested an alternative proposal that the President be given sole power to appoint judges.

That idea had almost no support. Rutledge of South Carolina said that he ''was by no means disposed to grant so great a power to any single person.'' James Madison agreed that the legislature was too large a body, and stated that he was ''rather inclined to give [the appointment power] to the Senatorial branch'' of the legislature, a group ''sufficiently stable and independent'' to provide ''deliberate judgements.''

A week later, Madison offered a formal motion to give the Senate the sole power to appoint judges and this motion was adopted without any objection. On June 19, the Convention formally adopted a working draft of the Constitution, and it gave the Senate the exclusive power to appoint judges.

July of 1787 was spent reviewing the draft Constitution. On July 18, the Convention reaffirmed its decision to grant the Senate the exclusive power. James Wilson again proposed ''that the Judges be appointed by the Executive'' and again his motion was defeated.

The issue was considered again on July 21, and the Convention again agreed to the exclusive Senate appointment of judges.

In a debate concerning the provision, George Mason called the idea of executive appointment of Federal judges a ''dangerous precedent.'' The Constitution was drafted to read: ''The Senate of the United States shall have power to appoint Judges of the Supreme Court.''

Not until the final days of the Convention was the President given power to nominate Judges. On September 4, 2 weeks before the Convention's work was completed, the Committee proposed that the President should have a role in selecting judges. It stated: ''The President shall nominate and by and with the advice and consent of the Senate shall appoint judges of the Supreme Court.'' The debates, make clear, however, that while the President had the power to nominate judges, the Senate still had a central role.

Governor Morris of Pennsylvania described the provision as giving the Senate the power ''to appoint Judges nominated to them by the President.'' The Constitutional Convention adopted this reworded provision giving the President the power, with the advice and consent of the Senate, to nominate and appoint judges.

The debates and the series of events proceeding adoption of the ''advise and consent'' language make clear, that the Senate should play an active role. The Convention having repeatedly rejected proposals that would lodge exclusive power to select judges with the executive branch, could not possibly have intended to reduce the Senate to a rubber stamp role.

The reasons given by delegates to the Convention for making the selection of judges a joint decision by the President and the Senate are as relevant today as they were in 1787. The framers refused to give the power of appointment to a ''single individual.'' They understood that a more representative judiciary would be attained by giving members of the Senate a major role.

From the start, the Senate has not hesitated to fully exercise this power. During the first 100 years after ratification of the Constitution, 21 or 81 Supreme Court nominations—one out of four—were rejected, withdrawn, or not acted on. During these confirmation debates, ideology often mattered. John Rutledge, nominated by George Washington, failed to win confirmation as Chief Justice in 1795.

Alexander Hamilton and other Federalists opposed him, because of his position on the controversial Jay Treaty. A nominee of President James Polk was rejected because of his anti-immigration position. A nominee of President Hoover was rejected because of his anti labor view. Our Republican colleagues are obviously aware of this. Their recent statements attempting to downplay the Senate's role stand in stark contrast to the statements when they controlled the Senate during the Clinton administration. At that time, they vigorously asserted their right of ''advice and consent.''

Indeed, while public debate and a demand to fully review a nominee's record is consistent with our duty of ''advice and consent,'' many of the actions by Republicans were damaging to the nominations process. Democrats have made clear our concerns about whether Mr. Estrada has met the burden of showing that he should be appointed to the DC Circuit, but Republicans resorted to tactics such as secret holds to block President Clinton's nominees. For instance, it took four years to act on the nomination of Richard Paez, a Mexican-American, to the Ninth Circuit. Senate Republicans repeatedly delayed floor action on Judge Paez through use of anonymous holds.

Republicans voted to indefinitely postpone action on Judge Paez's nomination. Finally, in March 2000, 4 years after his nomination and with the Presidential election on the horizon, Judge Paez was confirmed, after cloture was invoked.

Reviewing Mr. Estrada's nomination is our constitutional duty. We take his nomination particularly seriously because of the importance of the DC Circuit, the Court to which he has been nominated. The important work we do in Congress to improve health care, protect workers rights, and protect civil rights mean far less if we fail to fulfill our responsibility to provide the

best possible advice and consent on judicial nominations. Tough environmental laws mean little to a community that can't enforce them in our federal courts. Civil rights laws are undercut if there are no remedies for disabled men and women. Fair labor laws are only words on paper if we confirm judges who ignore them.

What we know about Mr. Estrada leads us to question whether he will deal fairly with the range of important issues affecting everyday Americans that came before him.

Mr. Estrada has been actively involved in supporting broad anti-loitering ordinances that restrict the rights of minority residents to conduct lawful activities in their neighborhoods. Mr. Estrada has sought to undermine the ability of civil rights groups like the NAACP to challenge these broad ordinances which affect the ability of minority citizens to conduct activities such as drug counseling and voter outreach in their communities.

Information we need to know about Mr. Estrada's record has been hidden from us by the Department of Justice. Democratic Senators have asked for Mr. Estrada's Solicitor General Memoranda. We have moved for unanimous consent to proceed to a vote on his nomination, after those memoranda are provided. Yet, the White House refuses to provide any of Mr. Estrada's memos, even though there is ample precedent for allowing the Senate to review these documents.

Even as Republicans refuse to allow us to see Mr. Estrada's memos from his time in public office—and even as Mr. Estrada declined to answer many basic questions about his judicial philosophy and approach—Republicans repeatedly make clear that they are familiar with Mr. Estrada's views and judicial philosophy.

Since his nomination, Republican Senators have repeatedly praised Mr. Estrada as a ''conservative.'' A recent article from Roll Call states that the Republican Party is confident that Mr. Estrada will rule in support of big business. The article also states that the Republican Party has asked lobbyists to get involved in the battle over Mr. Estrada's nomination.

I have spoken in recent days about the importance of the DC Circuit and it's shift to the right in the 1980s and 1990s. In the 1960s and 1970s, the DC Circuit had a significant role in protecting public access to agency and judicial proceedings, protecting civil rights guarantees, overseeing administrative agencies, protecting the public interest in communications regulation, and enforcing environmental protections. In the 1980s, however, the DC Circuit changed dramatically because of the appointment of conservative judges. As its composition changed, it became a conservative and activist court—striking down civil rights and constitutional protections, encouraging deregulation, closing the doors of the courts to many citizens, favoring employers over workers, and undermining federal protection of the environment.

It seems clear that Mr. Estrada has been nominated to the DC Circuit in the hope that this court will continue to be more interested in favoring big business than in protecting the rights of workers, consumers, women, minorities, and other Americans.

Mr. Estrada's nomination is strongly opposed by those concerned about these rights. Republicans repeatedly praise Mr. Estrada as a Hispanic—but many Hispanic groups oppose his nomination. The Congressional Hispanic Caucus, the Mexican American Legal Defense Fund, the Southwest Voter Registration Project, 52 Latino Labor Leaders representing working families across the country, the California League of United Lationo Citizens, the California La Raza, the Puerto Rican Legal Defense Fund and fifteen past presidents of the Hispanic National Bar Association, whose terms span from 1972 until 1998 have stated their opposition to Mr. Estrada. As these Presidents write:

Based upon our review and understanding of the totality of Mr. Estrada's record and life's experiences, we believe that there are more than enought reasons to conclude that Mr. Estrada's candidacy falls short. [These] reasons include: his virtually non-existent written record, his verbally expressed and un-rebutted extreme views, his lack of judicial or academic teaching experience (against which his fairness, reasoning skills and judicial philosophy could be properly tested), his poor judicial temperament, his total lack of connection whatsoever to, or lack of demonstrated interest in the Hispanic community, his refusals to answer even the most basic questions about civil rights and constitutional law, his less than candid responses to other straightforward questions of Senate Judiciary Committee Members.

I would like to include in the RECORD statements at the end of my remarks of two of the past National Presidents of the League of United Latin American Citizens opposing Mr. Estrada's nomination. The first statement is from Belen Robles, a native Texas who has a long and active involvement in the Latino civil rights community. He writes that he is ''deeply troubled with the nomination of Miguel Estrada.'' He is troubled by the positions that Mr. Estrada has taken on racial profiling, and on whether the NAACP had standing to put forward the claims of African-Americans arrested under an anti-loitering ordinance.

Mr. Robles writes:

As a former National President of LULAC, I know very well that on many occasions LULAC has been a champion of the rights of its membership in civil rights cases. We asserted those rights on behalf of voters in voting cases in Texas, and in many other civil rights cases. Under his view, Mr. Estrada could decide that a civil rights organization such as LULAC would not be able to sue on behalf of its members. NO supporter of civil rights could agree with Mr. Estrada's confirmation.

Ruben Bonilla, an attorney in Texas who is also a past National president of LULAC, opposes the confirmation of Mr. Estrada.

Mr. Bonilla writes:

I am deeply troubled with the double standard that surrounds the nomination of Mr. Estrada. It is particularly troubling that some of the Senators have accused Democrats or other Latinos of being anti-Hispanic, or holding the American dream hostage. Yet, these same Senators in fact prevented Latinos appointed by the Clinton Administration from ever being given a hearing. Notably, Corpus Christi lawyer Jorge Rangel, and El Paso attorney Enrique Moreno, and Denver attorney Christine Arguello never received hearings before the judiciary committee. Yet, these individuals who came from the top of their profession were schooled in the Ivy League, were raised from modest means in the Southwest, and in fact truly embodied the American Dream. These highly qualified Mexican-Americans never had the opportunity to introduce themselves and their views to the Senate, as Mr. Estrada did.

Mr. President, the Senate is entitled to see Mr. Estrada's full record. Both the Constitution and historical practices require us to ignore the Administration's obvious ideological nominations. Judicial nominees who come before the Senate should have professional qualifications and the right temperament to be a judge. They should be committed to basic constitutional principles. Many of us have no confidence that Mr. Estrada has met this burden. I urge the Senate to reject this nomination.

I ask unanimous consent that supporting material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HNBA'S PAST PRESIDENTS' STATEMENT,
FEBRUARY 21, 2003

We the undesigned past presidents of the Hispanic National Bar Association write in strong opposition to the nomination of Miguel A. Estrada for judgeship on the Court of Appeals for the District of Columbia Circuit.

Since the HNBA's establishment in 1972, promoting civil rights and advocating for judicial appointments of qualified Hispanic Americans throughout our nation have been our fundamental concerns. Over the years, we have had a proven and respected record of endorsing or not endorsing or rejecting nominees on a non-partisan basis of both Republican and Democratic presidents.

In addition to evaluating a candidate's professional experience and judicial temperament, the HNBA's policies and procedures governing judicial endorsements have required that the following additional criteria be considered: The extent to which a candidate has been involved in, supportive of, and responsive to the issues, needs and concerns or Hispanic Americans, and the candidate's demonstrated commitment to the concept of equal opportunity and equal justice under the law.

Based upon our review and understanding of the totality of Mr. Estrada's record and life's experiences, we believe that there are more than enough reasons to conclude that Mr. Estrada's candidacy falls short in these respects. We believe that for many reasons including: his virtually non-existent written record, his verbally expressed and un-rebutted extreme views, his lack of judicial or academic teaching experience, (against which his fairness, reasoning skills and judicial philosophy could be properly tested), his

poor judicial temperament, his total lack of any connection whatsoever to, or lack of demonstrated interest in the Hispanic community, his refusals to answer even the most basic questions about civil rights and constitutional law, his less than candid responses to the other straightforward questions of Senate Judiciary Committee members, and because of the Administration's refusal to provide the Judiciary Committee the additional information and cooperation it needs to address these concerns, the United States Senate cannot and must not conclude that Mr. Estrada can be a fair and impartial appellate court judge.

Respectfully submitted,

JOHN ROY CASTILLO, ET AL.

[From The Oregonian, Feb. 24, 2003]

ESTRADA WOULD DESTROY HARD-FOUGHT VICTORIES

(By Dolores C. Huerta)

As a co-founder of the United Farm Workers with Cesar Chavez, I know what progress looks like. Injustice and the fight against it take many forms-from boycotts and marches to contract negotiations and legislation. Over the years, we had to fight against brutal opponents, but the courts were often there to back us up. Where we moved forward, America's courts helped to establish important legal protections for all farm workers, all women, all Americans. Now, though, a dangerous shift in the courts could destroy the worker's rights, women's rights, and civil rights that our collective actions secured.

It is especially bitter for me that one of the most visible agents of the strategy to erase our legal victories is being called a great role model for Latinos. It is true that for Latinos to realize America's promise of equality and justice for all, we need to be represented in every sector of business and every branch of government. But it is also true that judges who would wipe out our hard-fought legal victories—no matter where they were born or what color their skin—are not role models for our children. And they are not the kind of judges we want on the federal courts.

Miguel Estrada is a successful lawyer, and he has powerful friends who are trying to get him a lifetime job as a federal judge. Many of them talk about him being a future Supreme Court justice. Shouldn't we be proud of him?

I for one am not too proud of a man who is unconcerned about the discrimination that many Latinos live with every day. I am not especially proud of a man whose political friends—the ones fighting hardest to put him on the court—are also fighting to abolish affirmative action and to make it harder if not impossible for federal courts to protect the rights and safety of workers and women and anyone with little power and only the hope of the courts to protect their legal rights.

Just as we resist the injustice of racial profiling and the assumption that we are lesser individuals because of where we were born or the color of our skin, so too must we resist the urge to endorse a man on the basis of his ethnic background. Members of the Congressional Hispanic Caucus met with Miguel Estrada and came away convinced that he would harm our community as a federal judge. The Mexican American Legal Defense and Educational Fund and the Puerto Rican Defense and Education Fund reviewed his record and came to the same conclusion.

Are these groups fighting Miguel Estrada because they are somehow anti-Hispanic? Are they saying that only people with certain political views are ''true'' Latinos? Of course not. They are saying that as a judge this man would do damage to the rights we have fought so hard to obtain, and that we cannot ignore that fact just because he is Latino. I think Cesar Chavez would be turning over in his grave if he knew that a candidate like this would be celebrated for supposedly representing the Hispanic community. He would also be dismayed that any civil rights organization would stay silent or back such a candidate.

To my friends who think this is all about politicians fighting among themselves, I ask you to think what would have happened over the last 40 years if the federal courts were fighting against worker's rights and women's rights and civil rights. And then think about how quickly that could become the world we are living in.

As MALDEF wrote in a detailed analysis, Estrada's record suggests that ''he would not recognize the due process rights of Latinos,'' that he ''would not fairly review Latino allegations of racial profiling by law enforcement,'' that he ''would most likely always find that government affirmative action programs fail to meet'' legal standards, and that he ''could very well compromise the rights of Latino voters under the Voting Rights Act.''

Miguel Estrada is only one of the people nominated by President Bush who could destroy much of what we have built if they become judges. The far right is fighting for them just as it is fighting for Estrada. We must fight back against Estrada and against all of them. If the only way to stop this is a filibuster in the Senate, I say, Que viva la filibuster!

STATEMENT OF RUBEN BONILLA, IN OPPOSITION TO THE CONFIRMATION OF MIGUEL ESTRADA

I write to join other Latinos in opposing the confirmation of Miguel Estrada to the DC Circuit Court of Appeals. I have a long history of involvement in the Latino civil rights community. I am an attorney in Corpus Christi, Texas, and am a past National President of LULAC. I am deeply concerned with the betterment of my community.

I am deeply troubled with the double standard that surrounds the nomination of Miguel Estrada. It is particularly troubling that some of the senators have accused Democrats or other Latinos of being anti-Hispanic, or holding the American dream hostage. Yet, these same senators in fact prevented Latinos appointed by the Clinton Administration from ever being given a hearing. Notably, Corpus Christi lawyer Jorge Rangel, and El Paso attorney Enrique Moreno, and Denver attorney Christine Arguello never received hearings before the judiciary committee. Yet, these individuals who came from the top of their profession were schooled in the Ivy League, were raised from modest means in the Southwest, and in fact truly embodied the American Dream. These highly qualified Mexican Americans never had the opportunity to introduce themselves and their views to the Senate, as Mr. Estrada did.

In addition to my concerns regarding this double standard. I am also concerned that Mr. Estrada showed himself unwilling to allow the Senate to fully evaluate his record. He was not candid in his responses. Yet, Mr. Estrada, as every other nominee who is a candidate for a lifelong appointment, must be prepared to fully answer basic questions, particularly where there is no prior judicial record or scholarly work to scrutinize. By declining to give full and candid responses, he frustrated the process. Individuals with values should be called to explain those values honestly and forthrightly. We can demand no less from those who would hold a lifelong appointment in our system of justice.

Finally, I am also concerned with some of the answers that Mr. Estrada did give when he was pressed. For example, I understand that as an attorney he argued that the NAACP did not have legal standing to press the claims of African Americans who had been arrested under a particular ordinance. As a former National President of LULAC, I know that on many occasions LULAC has represented the rights of its membership in voting cases, and in other civil rights matters. I would be troubled that if he were confirmed, Mr. Estrada would not find a civil rights organization to be an appropriate plaintiff, and would uphold closing the courthouse door on them.

Given these concerns, I oppose the confirmation of Mr. Miguel Estrada.

STATEMENT OF BELEN ROBLES IN OPPOSITION TO THE CONFIRMATION OF MIGUEL ESTRADA

I write to join other Latino leaders and organizations in opposing the confirmation of Miguel Estrada to the DC Circuit Court of Appeals. As a native Texan, I have a very long and active involvement in the Latino civil rights community and have worked hard to ensure that Latinos have real choices about their lives. I am a past National President of the League of United Latin American Citizens (LULAC).

I am deeply troubled with the nomination of Miguel Estrada. I am very troubled with the positions he seems to have taken about our youth being subjected to racial profiling. As I understand his position, he does not believe that racial profiling exists, and has many times argued that the Constitution gives police officers unbridled authority and power. In our communities, racial profiling does exist and our children have been subjected to it. This is an issue that Latino organizations, including LULAC have long cared about. In all of the years that I was involved with civil rights, LULAC always stood to protect our community, including our youth when law enforcement exceeds their authority.

I am also concerned that Mr. Estrada did not allow the Senate to fully evaluate his record. He was not open in his responses, but instead was evasive. Yet, anyone appointed to a lifelong position has to be willing to answer questions fully. The American people have a right to know who sits in our seats of justice. And to demand that the person be fair.

Mr. Estrada has also taken actions against organizations that make me believe that he would not be fair. For example, as an attorney he argued that the NAACP did not have legal standing to put forward the claims of African Americans who have been arrested under a particular ordinance. As a former National President of LULAC, I know very well that on many occasions LULAC has been a champion of the rights of its membership in civil rights cases. We asserted those rights on behalf of voters in voting cases in Texas, and in many other civil rights cases. Under his view, Mr. Estrada could decide that a civil rights organization such as LULAC would not be able to sue on behalf of its members. No supporter of civil rights could agree with Mr. Estrada's confirmation.

I oppose the confirmation of Mr. Miguel Estrada.

HISPANIC BAR ASSOCIATION OF PENNSYLVANIA,
Philadelphia, PA, January 28, 2003.

Hon. Senator EDWARD M. KENNEDY,
Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR HONORABLE SIR: I am writing on behalf of the Hispanic Bar Association of Pennsylvania (HBA) to inform you that we oppose the appointment of Miguel Angel Estrada to the United States Court of Appeals for the District of Columbia Circuit. For the reasons

that follow, we urge you to vote against Mr. Estrada's confirmation.

The HBA recognizes that Mr. Estrada's nomination was pending for some time prior to his hearing before the Senate Judiciary Committee on September 26, 2002. Nevertheless, it was the Hispanic National Bar Association's public endorsement of this candidate that prompted our organization to initiate its own evaluation of Mr. Estrada.

To that end, the HBA created a Special Committee on Judicial Nominations to develop a process for reviewing and potentially endorsing not only Mr. Estrada, but also all future candidates for the Judiciary. As part of the process, we contacted Mr. Estrada, asked to interview him, and invited him as a guest of the HBA to meet the members of our organization. Mr. Estrada, for stated good cause, declined our invitations. Notwithstanding Mr. Estrada's non-participation, the Committee completed its work and reported its findings to the HBA membership on November 14, 2002. Following the Committee's recommendation, the membership voted not to support Mr. Estrada's nomination.

The HBA recognizes and applauds Mr. Estrada for his outstanding professional and personal achievements. Indeed, the HBA adopts the American Bar Association's rating of ''well-qualified'' with regard to Mr. Estrada's professional competence and integrity. However, employing the ABA's seven established criteria for evaluating judicial temperament, the HBA finds Mr. Estrada to be lacking. Our organization could find no evidence that Mr. Estrada has demonstrated the judicial position. In addition, the HBA seeks to endorse individuals who have ''demonstrated awareness and sensitivity to minority, particularly Hispanic concerns.'' Sadly, we also could find no evidence of this quality in Mr. Estrada.

The HBA shares the concern of the president of the Judiciary Committee that only the best-qualified and most suitable individuals be appointed to the federal bench. Furthermore, the HBA appreciates the efforts, as evidenced by Mr. Estrada's nomination, to consider and promote members of the rapidly growing Latino population to positions of high visibility and importance. However, we believe that there are a myriad of other well-qualified Latinos whose integrity, professional competence, and judicial temperament would be beyond reproach and who would therefore be better suited for this position.

The Hispanic Bar Association of Pennsylvania regrets that it cannot support the nomination of Mr. Estrada to the United States Court of Appeals for the District of Columbia Circuit. We respectfully request that you oppose the confirmation of his nomination.

Respectfully submitted,

ARLENE RIVERA FINKELSTEIN,

President, and the Special Committee on Judicial Nominations on behalf of the Hispanic Bar Association of Pennsylvania.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CRAPO). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, today is the 12th day, as remarkable as that seems, that the Senate is debating this nomination instead of doing what it has to for the important business of the American people, as I see it. It is quite clear the other side is just not going to get cloture on this nomination. So the choice is either bring forward a cloture motion or move on to other business.

The Nation's Governors are in Washington meeting with President Bush and Members of Congress to discuss critically important issues, such as homeland security, rising unemployment, and increasing State deficits. These are serious issues that need attention, but we are delaying tending to the needs of the American people with endless debate on a judicial nominee who is refusing to tell the Senate almost anything about his judicial philosophy or decisionmaking process.

This hide-the-ball strategy being used by Mr. Estrada, frankly, I think is an affront to the Senate and the American people. We have the right to get complete and thoughtful answers to legitimate concerns about his approach to his interpretation of the U.S. Constitution and the laws of the country.

I was formerly a businessman. Sometimes there are processes that are not dissimilar to our functions here. One of them is to be able to understand what a nominee or an appointment of a high-ranking executive might include and a review of that person's potential, that person's experience, that person's attitude before you put him to work.

My fellow Senators on the other side of the aisle would have the Senate, considered the most deliberative body in world history—and, I assume, also considered one of the most thoughtful places in the world in terms of Government and deliberative bodies—vote to confirm a nominee to a lifetime—lifetime, and it is important people realize that means you cannot be fired from the job; this means you can go as long as you want to, and when you are finished with your service, your salary continues at exactly the same level it did when you went to work every day—a lifetime appointment without disclosure of what I and my colleagues consider required information.

In the business world, this practice would have been unheard of, and the American people deserve better. If someone were seeking a post and they appeared before a congressional committee or a department head and said, I would like the job, but I am not willing to answer that questionnaire, that would make that aspirant unacceptable under any condition. It should be a requirement when a lifetime-tenured job is under discussion, something so important as the circuit court of appeals where people, after getting a decision from district court, go to get the judgment of wise and experienced people. His unwillingness to answer questions, to talk about what he stands for, and what he believes is a shocking disregard for appropriate behavior.

Responsible business owners do not hire senior managers without first conducting a complete and thorough review of that candidate's job application. The candidate would answer questions that give interviewers an opportunity to measure the candidate's decisionmaking process and views on work-related issues. A candidate cannot simply refuse to answer important questions of fitness, philosophy, or temperament. No business executive would hire a candidate who refused to answer basic inquiries. These are not private matters. They become the matters of the employer, be it government or business. Those in business would put their businesses at risk and leave themselves susceptible to future lawsuits based on negligent hiring practices.

No one is doubting the fact Mr. Estrada is bright and intelligent, but his repeated refusal to provide the Senate with any insight into his views on the law and the U.S. Constitution is incomprehensible. I just cannot understand it. How can we make an informed decision about a judicial nominee if the nominee refuses to provide the Senate with sufficient information about his judicial philosophy and, therefore, his temperament?

The questions being asked are not prohibited by law or judicial or professional ethics codes. Instead of entertaining continuing with these dilatory tactics, the Senate should simply move on to the important business of the American people concerned about the protection of their homeland; move on to repair a hemorrhaging Federal budget that under this administration has been converted from a $5.6 trillion surplus into a 2.$1 trillion deficit; move on to provide States that are experiencing dire economic conditions with more Federal assistance that would help them weather the storms during these times of increasing unemployment, threatening war with Iraq, and a sustained fear of potential terrorist acts.

In the most recent CNN Gallup poll, 50 percent of Americans believe the economy is the most pressing issue confronting the Nation. Thirty percent of Americans believe the war with Iraq is the most important issue, second to jobs and the economy.

The nomination of Mr. Estrada did not make the list of important concerns facing the Nation. Since January 2001, the number of unemployed Americans has increased by nearly 40 percent, with nearly 8.3 million Americans out of work.

Since President Bush took office, 2.3 million private sector jobs have been lost and the unemployment rate for Latinos by way of example has increased 33 percent. According to the Department of Labor, there are now 2.4 jobseekers for every job opening. So rather than focusing on creating jobs for 8.3 million Americans, the Senate is targeted on the job of one attorney, a very successful attorney who made a lot of money. But how does that influence what the American people see as their need?

This is the same thinking that has produced an economic stimulus package that overwhelmingly favors the top 1 percent of American taxpayers while giving very little to those who really need some economic help.

The Senate needs to move on to the important work of protecting the homeland. CIA Director Tenet and FBI Director Mueller have both testified that America is still vulnerable to terrorist attack, and we keep on hearing alarms described in different colors. The American public does not understand what the difference between red and yellow is. They just know it scares them. It panics them. They do not know what to do. I get phone calls from people in New Jersey asking, Should we stay out of New York City? Should we not take our children on a trip? Should we stay home? The answer to all of those is that we do not really know, but we ought to get on with finding out.

The omnibus appropriations bill provides less than half of the $3.5 billion in funding promised to law enforcement people, firefighters, and emergency medical personnel. Meanwhile, America's ports, borders, and critical infrastructure remain dangerously unprotected.

Once again, instead of focusing on protecting the homeland and funding our first responders, the work of the Senate is being delayed in order to secure the appointment of a judicial nominee who refuses to share his views with the American people.

I do not intend to demean or diminish the importance of this nomination. It is very important. To the contrary, the nomination at issue is to the U.S. Court of Appeals for the DC Circuit, which is the most powerful intermediate Federal appellate court, second only to the U.S. Supreme Court. The DC Circuit is more powerful, it is observed, than other Federal courts because it has exclusive jurisdiction over a broad array of far-reaching Federal regulations that enforce critical environment, consumer, and worker protection laws.

As history has shown, DC Circuit Court judges are often tapped to serve on the Supreme Court. Presently, three of the nine Supreme Court Justices—Justices Antonin Scalia, Clarence Thomas, and Ruth Bader Ginsburg—previously served on the DC Circuit.

The Senate has a constitutional responsibility. The constitutional judicial confirmation process grants authority to the President of the United States to make the nominations and gives the Senate an equally significant role to agree by advising and consenting with the President's recommendation before a nominee can sit on the Federal bench. These important, mutually coexisting roles of the President and the Senate are central to the democratic system of separation of powers and checks and balances.

Mr. Estrada must provide the Senate with a full and complete understanding of his views of the law and the Constitution, including important civil rights laws that protect all Americans, especially minorities, women, the elderly, and the disabled. However, if he is unwilling or the White House is unwilling to nominate judicial nominees who are willing to answer reasonable, nonintrusive, and legitimate inquiries of the Senate, then these nominees should not be confirmed.

The role of the Senate in the confirmation process is advise and consent. It does not say anyplace to rubberstamp all Presidential nominations. The Senate should not abdicate its responsibility to thoroughly review judicial nominations. It is a responsibility, it is an obligation, for each one of us. Rather, the Senate is dutybound to ensure that each nominee maintains the utmost commitment to upholding the Constitution of our country—following precedent, listening to arguments without fear or favor, and rendering judgment without personal bias. Miguel Estrada has failed to respond to legitimate inquiries to the Senate and the American people.

As I said before, it is time to move on to the important work of the American people, and let this appointment fall as it should unless Mr. Estrada has a reckoning with himself and his obligation and comes to the Senate to discuss his views in response to questions posed by the Senate.

Mr. REID. Will the Senator yield for a question?

Mr. LAUTENBERG. Yes.

Mr. REID. The Senator is from the State of New Jersey. Of course, the State of New Jersey is very aware of the news that is put out in the New York Times and the editorials put out in the New York Times. Is that a fair statement?

Mr. LAUTENBERG. It is a very important paper, yes.

Mr. REID. I do not know if the Senator is aware that I read into the RECORD this morning a New York Times editorial from last fall dealing with Estrada. I ask the Senator if he is aware of the first paragraph of an editorial written February 13, 2003, in the New York Times?

Is the Senator also aware that last night the majority read into the RECORD a number of editorials from around the country?

Mr. LAUTENBERG. I am aware of that.

Mr. REID. Does the Senator from New Jersey know the circulation of the New York Times?

Mr. LAUTENBERG. I do not know precisely, but it is in the——

Mr. REID. It is in the millions.

Mr. LAUTENBERG. I am sorry?

Mr. REID. It is over a million.

Mr. LAUTENBERG. Over a million certainly on the weekends.

Mr. REID. Yes, I am sure it is.

Is the Senator aware of this editorial that says, paragraph No. 1, ''The Bush administration is missing the point in the Senate battle over Miguel Estrada, its controversial nominee to the powerful DC Circuit Court of Appeals. Democrats who have vowed to filibuster the nomination are not engaging in 'shameful politics,' as the President has put it, nor are they anti-Latino, as Republicans have cynically charged. They are insisting that the White House respect the Senate's role in confirming judicial nominees''?

Mr. LAUTENBERG. I am. I am also aware of the fact that there are Latino organizations that are unalterably opposed to this nomination.

Mr. REID. If the Senator will yield for a question, is he aware that it is led by the Congressional Hispanic Caucus?

Mr. LAUTENBERG. I am aware of all that.

Mr. REID. If the Senator will yield for a further question, it would be difficult, would it not, to say that the Congressional Hispanic Caucus was anti-Hispanic?

Mr. LAUTENBERG. I absolutely agree that there would typically be a determination by them to support the nomination, but they are not. If the Senator will help sharpen my memory, I think they said keep on talking in the close of that editorial piece.

Mr. REID. We are going to find out. If the Senator would yield for another question?

Mr. LAUTENBERG. I would be happy to.

Mr. REID. I ask if the Senator from New Jersey agrees with that first paragraph of the editorial that I just wrote—read. I wish I had written it, but I read it.

Mr. LAUTENBERG. I agree with the Senator and wish I had written it as well.

Mr. REID. It is a short editorial. It is only three paragraphs. I will ask the Senator a question if he would yield.

Mr. LAUTENBERG. Yes.

Mr. REID. ''The Bush administration has shown no interest in working with Senate Democrats to select nominees who could be approved by consensus, and has dug in its heels on its most controversial choices. At their confirmation hearings, judicial nominees have refused to answer questions about their views on legal issues. And Senate Republicans have rushed through the procedures on controversial nominees. Mr. Estrada embodies the White House's scorn for the Senate's role. Dubbed the 'stealth candidate,' he arrived with an extremely conservative reputation but almost no paper trail. He refused to answer questions, and although he had written many memorandums as a lawyer in the Justice Department, the White House refused to release them.''

Does the Senator from New Jersey agree with the statement made in this editorial, second paragraph, by the New York Times?

Mr. LAUTENBERG. I agree with it fully. I read that editorial. I was in total agreement with their logic, coming from New Jersey where we had candidates who were recommended for the

appeals court languish—nothing happening for months and months and months. The protests we hear now from our friends on the other side about the process are a bit shameless because we had a nominee from California, Mr. Paez, who waited, I believe, 1,500 days.

Mr. REID. One thousand five hundred four days.

Mr. LAUTENBERG. Waiting for a review by the committee, and could not get that.

If we talk about obstinate approaches to the process about deliberate obstruction, the record is very clear.

When we presented candidates, when the Democrats were a majority, they could not move them because the Republican side of the Senate would not permit any action at all.

Mr. REID. Will the Senator yield for an additional question?

Mr. LAUTENBERG. I am happy to yield to my friend from Nevada.

Mr. REID. The final paragraph of this short but powerful editorial, does the Senator from New Jersey agree with this:

> The Senate Democratic leader, Tom Daschle, insists that the Senate be given the information it needs to evaluate Mr. Estrada. He says there cannot be a vote until senators are given access to Mr. Estrada's memorandums and until they get answers to their questions. The White House can call this politics or obstruction. But in fact it is Senators doing their jobs.

Would the Senator agree with this statement?

Mr. LAUTENBERG. I agree 100 percent with that statement, and I think we ought to get on with the business of the American people.

Mr. REID. If the Senator will yield for another question before he leaves the floor. The Senator mentioned there were aspirants to be appellate judges, and is the Senator aware that a number of these people were from New York? Is that true?

Mr. LAUTENBERG. Indeed, that is true.

I just got a letter from a district court judge in New Jersey, considered one of the most brilliant and able district court judges, who was recommended for the circuit court of appeals in our district and decided after a long wait that he was not going to get a chance to be heard for a circuit court job. He informs me in his letter that he is going back to the law firm after 10 years on the Federal bench—a distinguished jurist, a great loss. He could not get a hearing, so he decided to withdraw rather than sit there and be dangled like a kite in the wind.

Mr. REID. Is the Senator aware of the names of 79 Clinton judicial nominees who were not confirmed by the Republicans?

Mr. LAUTENBERG. I am fully aware of that. I listened when the distinguished Democratic whip read that list the first time, and I took the liberty of reading the list a second time to make sure it was clearly understood.

Mr. LAUTENBERG. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THOMAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THOMAS. Mr. President, it is very interesting to hear the discussions. It is very similar to what we have heard now for a couple of weeks. I could not agree more with the Senator from New Jersey who says let's get on with it. I have a suggestion as to how we can do that. There are more than a majority in this Senate who are satisfied with this candidate and ready to vote. All we need to do is have an up-or-down vote. Those who are opposing that are in the minority. They can study as many things as they choose. The fact is, the majority of the people on this floor are satisfied this candidate is the right candidate and it is time to go. I could not agree more.

We have a lot of things to do. We have gone through the hearings, we have gone through all the background, and certainly most of us would like to get away from this delay tactic and get on with our work. I have to say that when the majority is ready to go, that is what we ought to do. I suggest that.

I will discuss another subject for a moment.

THE PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. THOMAS. I thank the Chair.

(The remarks of Mr. THOMAS pertaining to the introduction of S. 475 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. THOMAS. Mr. President, again I hope we find ourselves in a position to move forward. I don't think there is a soul here who would not admit we have talked enough about this judicial nomination. I don't think there is a soul here who would deny we have all made up our minds, we all know exactly what we are going to do. It is very clear that the majority on this floor is prepared to vote for this nominee and we are being held up over here by a minority that simply continues to ask for something that is not necessary because the majority has already been determined. So I hope we can move on and do the business of this country for these people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. Mr. President, I rise today to submit a resolution.

(The remarks of Mr. CRAPO pertaining to the submission of S. Con. Res. 11 are printed in today's RECORD under ''Submission on Concurrent and Senate Resolutions.'')

JUDICIARY COMMITTEE ACTION

Mr. DASCHLE. Mr. President, I wanted to come to the floor this afternoon to discuss a matter that occurred in the Judiciary Committee today that is deeply troubling.

During a mark-up of 3 controversial circuit court nominees, the Chairman of the Judiciary Committee refused to observe the long-standing rules of the committee and brought two circuit court nominations to a vote despite the fact that there was a desire by several members of the minority to continue debate.

This situation is very specifically addressed by Committee Rule No. 4, which reads as follows:

> The Chairman shall entertain a non-debatable motion to bring a matter before the Committee to a vote. If there is objection to bring the matter to a vote without further debate, a rollcall vote of the Committee shall be taken, and debate shall be terminated if the motion to bring the matter to a vote without further debate passes with ten votes in the affirmative, one of which must be cast by the Minority.

At the time that the chairman attempted to bring the nominations of John Roberts and Deborah Cook to a vote, objections were lodged by at least 2 members of the committee.

In fact, I believe that this rule was read into the RECORD in an effort to make clear to the chairman that it was not appropriate under the committee rules to bring these matters to a vote.

Despite the fact that this action represented a clear violation of the committee rules, the chairman ended debate on these nominations and conducted a roll call vote.

This reckless exercise of raw power by a chairman without regard to the agreed-upon standards of conduct that members of the committee have agreed to is ominous.

Senate committees either have rules or they do not. It cannot be the case that the rules of a committee will apply unless the chairman deems them inconvenient or an obstacle to a goal he seeks at any given moment.

This body has, for over 200 years, operated on the principle that civil debate and resolution of competing philosophies require rules. If the actions taken today indicate the new standard to which the majority plans to hold itself, then I propose that we simply repeal committee rules altogether and acknowledge that ''might makes right'' and there is no respect for minority interests.

How can we expect the Judiciary Committee to place on the bench individuals who respect the rule of law if the very process that the committee uses to confirm those individuals violates the Senate rules themselves?

I hope that upon reflection the chairman of the Judiciary Committee will reconvene the committee and allow for the committee to report out these nominations in a manner that is consistent with the committee rules.

If not, he must recognize that he is setting a terrible precedent regarding the operation of Senate committees in the future, regardless of which party may be in control.

Mr. President, I am very deeply troubled. This is a body of rules. This is a

country of laws. I cannot imagine that there is ever a time that any one of us—any one of us—ought to be in a position to say: The rules in this case are not going to apply, the law in this case will not apply.

And how ironic—how ironic—that in the Judiciary Committee, the committee which passes judgment on those who will interpret the rule of law, that very committee violated the rule today.

So, Mr. President, we call attention to this extraordinary development with grave concern about its implications, about its precedent, about the message it sends. And I must say, it will not be tolerated.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOMELAND SECURITY

Mr. REID. Mr. President, there have been a number of statements over the past many months about the fact that we should have been spending more money on homeland security.

For example, this week, I had a woman come to me from Las Vegas, who is in charge of the 9–1–1 center at the Metropolitan Police Department, a very large police department, with hundreds and hundreds of police officers representing that urban area of some 1.5 to 1.7 million people.

She indicated to me there is a real problem. If you have a telephone call coming from a standard telephone, that person can be identified. They know the location of that telephone. Or if it is a pay phone, they know the location of that pay phone. But today a lot of people are getting rid of their standard telephones, as we know them, and are using computers, and millions and millions of people are using cell phones.

She said that for virtually every place in the United States, including the Las Vegas area, if you call 9–1–1 from a cell phone, they have no idea who is making the phone call or where it is coming from. And, of course, with the computer, that is absolutely the case also.

She was lamenting the fact that the technology is there. It is easy to do what needs to be done to make sure that 9–1–1 calls that come from cell phones can be located.

People have lost their lives and have been injured and harm caused to them as a result of 9–1–1 not being able to identify when the emergency call comes in. This is only one example of how technology could handle the problem.

Why isn't it being done in Las Vegas and other places? There isn't enough money. With what happened on September 11, there is tremendous need for more money to be spent for homeland security. This was certainly the opinion of the Governors who were in town this week. They are having all kinds of problems.

So, Mr. President, I would like to refer again to the New York Times. I have talked about an editorial, as did my friend from Idaho, in the New York Times. I want to refer to a news story from the New York Times, dated today, February 27, 2003, written by one Philip Shenon, entitled ''White House Concedes That Counterterror Budget Is Meager.'' In effect, what this news article says is the White House now recognizes that there isn't enough money to take care of the problems of homeland security.

In this article, among other things, the President blames the leadership of the House and the Senate. And, of course, that does not include the Democratic leadership, because everyone knows, including the President, that we have been crying for more money for more than a year.

There are just a couple things from this news article I would like to point out to the Senate:

. . . the long delayed Government spending plan for the year does not provide enough money to protect against terrorist attacks on American soil.

Mr. President, this is a statement from this administration. This is not a statement from the Senator from West Virginia, the senior member of the Appropriations Committee, who has spoken for hours and hours on the need for more money. This is not a statement from Senator DASCHLE, the Democratic leader. This is coming from the administration: White House concedes that counterterror budget is meager.

The article goes on to say:

. . . because it had failed to provide adequate money for local counterterrorism programs.

Mr. President, throughout America today you can't have police agencies talking with each other. In Las Vegas, as an example, you have the Las Vegas Metropolitan Police Department, the city of Henderson, and Boulder City, and they can't talk to each other in an emergency. The technology is there. They can do that. But these governments simply don't have the money to do that. Fire departments can't talk to police departments all over America. It is not only a problem in Nevada.

We have been asking that the President help with these moneys, and he has been unwilling to do so. He, in effect, vetoed a multibillion dollar proposal we had in a bill just a short time ago. In the bill we had, the big omnibus bill, we asked for a small amount of money for all the demands in here. We asked for $3.5 billion, but it contains only, as this article indicates, about $1.3 billion in counterterrorism money for local governments.

Now, these remarks struck some of the audiences unusually sharp, given that ''both Houses of Congress are controlled by the President's party,'' as the article indicates.

Now, there is more in this article, and the day is late, and the snow is falling, but I do want to read this to make sure the picture is plain.

This is a quote from Governor Gary Locke of Washington, which is in the article:

We have a lot of police agencies in the state that were assured by the administration, repeatedly, that this money was on the way.

Still quoting from the article:

He said that many police and fire departments had bought [for example] hazardous-materials protective suits and other counterterrorism equipment in the expectation that they would be reimbursed by the federal government.

''And now,'' Governor Locke said, ''they're going to have to scramble to terminate other programs in order to cover those costs.''

It is not only Democratic Governors complaining. Republican Governors are complaining. Governor Bob Taft, a Republican, said lawmakers did not appropriate the amount that was recommended and earmarked for what they appropriated. So it is very clear there are things we need to do on this Senate floor that deal with more than the employment of one man, Miguel Estrada, a man who today, I am sure, is billing big hours down at his plush office here in Washington, a man who makes hundreds of thousands of dollars a year.

There have been statements made on this floor that it is extremely important that we shift from this man's employment, one man's employment, to the millions of people who are unemployed, and millions who are underemployed, people who have no health insurance and are underinsured and the many other problems we face.

UNANIMOUS CONSENT REQUEST—S. 466

Based upon the New York Times article and the fact that the President of the United States has now acknowledged that the counterterror budget is meager, I ask unanimous consent that the Senate return to legislative session and then proceed to the immediate consideration of S. 466, a bill to provide $5 billion for first responders, introduced today by Senator DASCHLE.

The PRESIDING OFFICER. Is there objection?

Mr. CRAPO. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, this is no surprise. I hope that people will understand the need to go to other legislation. When we have our own President who, for more than a year, has said we have enough money, there is money in the pipeline, now agreeing that we have a problem, that we don't have enough money. The State of Nevada, I spoke to the State legislature there a week ago last Tuesday, 10 days ago, 9 days ago. I told the legislature there, which is like 45 other State legislatures around America today, they have a State that is in red ink. I told them there are a number of reasons they are

in red ink. One is we have passed a bill called Leave No Child Behind, and we are leaving lots of children behind because we passed on to the State of Nevada and other States unfunded mandates that create financial problems for the States.

I also told the State legislature that what we have done in passing different measures dealing with terrorism, we have passed on to the State and local governments unfunded mandates, costing the State of Nevada and local governments millions of dollars, causing their budgets to be in the red significantly.

The President is wrong. He must help us address the problem. Senator DASCHLE's bill for $5 billion for first responders is not enough, but it is a step in the right direction.

We are fighting. We have now here the former chairman of the Armed Services Committee, now ranking member. As we speak, American forces are in a war in Afghanistan. People every day are being wounded and killed in Afghanistan. But that has been overwhelmed by what is going on in Iraq, or what soon will go on in Iraq.

We have lots of problems. We have problems in North Korea, which is a real serious one. They have started their second reactor there in the last few days. I was present at a briefing the other day with somebody from the administration who should know about how much the war is going to cost, and they don't know. The war in Iraq, they don't know. But we know we have a war going on here at home to fight terrorism, and we are not spending enough money to protect American people.

We have interests in the Middle East. We have interests in Afghanistan. We have interests on the Korean peninsula. We have interests here, and they are being neglected. The President acknowledges that. What are we doing here, spending 3 weeks dealing with Miguel Estrada. It is wrong. I am not surprised this unanimous consent request was objected to, but even though I am not surprised, it doesn't take away from the significance and really how depressed I am as a result of not having the adequate resources we need to take care of the problems dealing with homeland security.

Mr. LEVIN. I wonder if the Senator will yield for one question?

Mr. REID. I am happy to yield to my friend.

Mr. LEVIN. We have heard now with some regularity from the administration that they have no idea, no estimate as to what the cost of the war with Iraq will be, nor what the aftermath would cost; in other words, assuming there is a war, assuming that we occupy Iraq with or without others. According to General Shinseki, that could actually involve up to 100,000 troops there for some unlimited period of time. But even if they disagree with that, which apparently some members of the Pentagon do, we have not been able to obtain—and they claim there is none—an estimate of the cost of the aftermath of a war with Iraq at the same time that they are asking us to put in place an additional tax cut.

Does it not strike my good friend from Nevada as being irresponsible to put into place tax cuts with huge costs to the Treasury when we are likely on the verge of a war which has no particular estimated cost, and then the aftermath of that war, which could last years, in turn also has no estimated cost? Does it not strike the Senator from Nevada as simply not being the responsible thing to do to be imposing or putting into place tax reductions which means losses to the Treasury, when we are right on the verge of potential expenditures which could be literally hundreds of billions of dollars over a reasonably short period of time?

Mr. REID. Even though I would disagree with what the administration would do if they had the information and wouldn't give it to us, I wouldn't like that, but I would at least feel more comfortable that they were on top of their game. But for them to come to us and say, we don't know, that says it all. If they don't know and have no estimates as to the cost of what post-Iraq is going to be, we should all be concerned. If the general is 50 percent wrong, and it is only 100,000 troops, that is a lot of troops to keep there for a period of time. They don't know whether it is 2 days, 2 years or 2 decades.

Mr. LEVIN. And the answer we get is there is no way to know with certainty. These specifics are simply not available. There are too many imponderables. That is true, there are clearly some uncertainties. But it seems obvious to me the planners at the Pentagon must have some range of time or else there is no exit strategy, or else it is forever.

Previous administrations have been criticized for not having exit strategies, not having estimates in time, for making their estimate too short: They will be home by Christmas. But that is no excuse for not having some range—that we will be there from 1 to 3 years according to the best estimate. The worst case scenario is X number of years, best case scenario is such and such. The best case scenario is we won't have problems with the Kurds or the Shia will not be attacking the Sunni. The worst case scenario is we will have those kinds of civil wars. There are best case and worst case scenarios which allow planners who are working actually on estimated costs and exit strategies to come up with some kind of an estimate upon which we can base future resources and expenditures of this Nation.

Mr. REID. People in the administration who try to be candid with Congress get in trouble. Larry Lindsey, the chief economic adviser to the President, told us the war would cost $100 billion. He lost his job. I don't know if that is the only reason, but the general, a couple days ago, said: We will have to have 200,000 troops. There was a mad rush to that poor man to get him to change his opinion, and he changed his opinion and said: Maybe I was wrong, maybe it will be—and he mumbled around a little bit, but he gave an honest answer.

Mr. LEVIN. He did.

Mr. REID. Let's hope he doesn't lose his job. Let me also say this. We have all been impressed with this movie ''A Beautiful Mind,'' which a year ago won the Academy Award. The principle of that movie and the book that I read, written by a woman named Nasar, was that this brilliant man, Nash, figured out what was called the game theory. This doesn't necessarily mean playing checkers.

He was able to determine through this brilliant mind that he had what would happen if more than two people were engaged in an activity and, as a result of the work he did, that is what much of the cold war planning was based upon—his theory, his game theory.

Now, for me to be told that this mighty Nation, the United States of America, with 260 million people, with the finest educational institutions in the world—there are about 121 great universities in the world, and we have about 112 of them; basically they are all in America. So for someone to tell me that we don't know what it is going to cost postwar, that simply is not being candid. They know. There are different scenarios and they have them all in those computers, and they know what the different costs are going to be.

I say to my friend from Michigan that, through mathematics, through computer modeling, you can figure about anything out. As most everybody knows, my last election was real close. I won election night by 401 votes. By the time it was over, I picked up 27 more votes. But on election night, I had a computer man who worked with me for many years. He was a fine man. He had run a number of different models for the 17 counties in Nevada and he told me after the vote was out of Clark County: You cannot lose. I have run every model there is and you cannot lose. It will be close, but you cannot lose. He figured out with mathematical certainty that I could not lose. Now, I didn't believe him, but he knew because he believes math doesn't lie.

So without belaboring the point to the Senator from Michigan, somebody knows in this administration, but they are not going to tell us because they are afraid the American people are going to lose more confidence. As reported yesterday, the Wall Street Journal reports that soaring energy costs, the threat of terrorism, and a stagnant job market has sent consumer spirits plunging to levels only seen in recessions. That was from yesterday. That is why they are not telling us.

I have given the Senator a very long answer to a short question, but I believe the administration knows and

they are afraid to fess up to the Congress and to the American people what this war is going to cost.

Mr. LEVIN. Just to add one further thought, it seems to me it would be absolutely irresponsible not to have a range or an estimate of what the cost of a war would be in the best and worst case scenarios.

Mr. REID. Or middle case.

Mr. LEVIN. Yes, or at least a range on what is the worst case scenario and what is the best case scenario. I cannot believe the planners at the Pentagon and the OMB do not have a range. If they don't have a range, it would be irresponsible because how in heaven's name can the administration then say that we can afford a tax cut of the size they are proposing, when we have an impending demand for resources in a war that could be lengthy, costly, and then the aftermath could be lengthy and costly? It borders on the reckless, in terms of an economy, to say we don't have an estimate, we don't know whether or not it is going to be $20 billion, $40 billion, $100 billion—we don't have a range; yet they are trying to persuade a majority of the Congress that we ought to shrink the resources coming into the Government at the same time we are on the verge of war and the aftermath of a war, which doesn't have any estimated length, any estimated cost, and no troop estimate. We were given about a 200,000 estimate. Well, that is too high. OK, what is the ceiling that is more realistic to the people who say 200,000 is too high? We are completely devoid of that.

What we are not devoid of, though, is the effort to shrink resources to this Government through a tax cut, which has a number of problems to it. One of them is that when we are facing what we are in terms of expenditures, it is not the responsible thing to do.

Mr. REID. I would like to respond, not in a very direct way, but to point out problems the Senator has outlined in his statement to me. Is the Senator aware that yesterday I talked about a Pew Research Center poll? It is a nonpartisan organization. They are not for Democrats or Republicans. This was a real big poll, where 1,254 adults were contacted between February 12 and 18. For the first time in this administration, the American people do not approve of the way George W. Bush is handling the economy; 48 percent of the people disapprove. Is the Senator aware of that?

Mr. LEVIN. I wasn't aware of the Senator's remarks, but I was aware of the poll.

Mr. REID. And the Senator talked about tax policy. This same poll says that 44 percent of the American people disagree of George W. Bush's handling of tax policy. So the Senator said it all. I appreciate his asking me a question.

Mr. LEVIN. Mr. President, I am going to speak about the very budget document that the Senator from Nevada and I have been discussing, perhaps in an indirect way. I wish to share some thoughts with the Senate about the proposed budget for 2004, which the President has now sent to Congress.

As always, I wanted to see where the President's priorities were—not in sound bites, but the actual nitty-gritty numbers in the budget document. While every budget request is important, with the economy sputtering the way it is and with huge Federal deficits looming and critical domestic and international issues unresolved, particularly when we are facing the potential of a war and a very lengthy and complicated, expensive aftermath to that war, this budget requires special attention.

I have been keenly disappointed by what this attention revealed. The President's budget would do exactly what he recently said he did not want to do, which was to pass our problems along to the next generation. The President made a very eloquent statement in the State of the Union Address, saying that we are not going to pass our problems along to the next generation. But when you look at the details of the budget, that is precisely what this budget request does.

By the administration's own calculations, this budget would have us run a deficit of over a trillion dollars for the next 5 years, including record-setting deficits of over $300 billion for this year and next.

Now, the contrast here between this projection of deficit and the $5.5 trillion 10-year surplus that was projected in January of 2001 is simply stunning. That contrast between just what 2 years ago was projected for our economy—a $5.5 trillion surplus—now there are projections of deficits upon deficits upon deficits—a projected deficit of over a trillion dollars over the next 5 years.

The administration's plan estimates a non-Social Security deficit totaling over $2.5 trillion to the year 2008, which would leave us with an additional debt of $5 trillion in 2008, which is 150 times greater than what was projected just in the year 2001.

Why such dire fiscal predictions? First, while the tax cut in the year 2001 played a huge part in putting us into the current deficit ditch, the President's call for an additional $1.5 trillion in new tax cuts—most of which disproportionately benefits upper income folks—will help ensure that we not only stay in the deficit ditch, which we are back into, but that it will be a deep deficit ditch.

Even Federal Reserve Chairman Alan Greenspan recognized the danger of such cuts when he spoke of the importance of curbing the deficit, not increasing it.

That perhaps came as a surprise to some people in the administration who were looking to Alan Greenspan to give support to the tax cut proposal and minimize, they hoped, the impact of deficits on future economies. That is not what Chairman Greenspan did. He straightforwardly recognized the danger of the tax cuts when he spoke of the importance of reducing deficits and not increasing deficits.

Mr. President, I see the Democratic leader is in the Chamber. I withhold the remainder of my comments at this time because he has a very important message relative to North Korea, and I wish to participate with him in a colloquy and presentation. So I withhold the remainder of my comments relative to the President's budget at this time.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader.

NORTH KOREA

Mr. DASCHLE. Mr. President, I thank the distinguished Senator from Michigan for his courtesy and appreciate very much his comments with regard to the budget and his extraordinary leadership with regard to many issues involving our military challenges and priorities abroad.

Three weeks ago, I came to the Senate floor to address the intensifying crisis in North Korea, a country and a situation that I believe poses a risk to our Nation every bit as serious as that posed by Saddam Hussein. At the time, I urged President Bush immediately and directly to engage the North Korean Government in discussions to bring about a verifiable end to that country's nuclear weapons program.

Unfortunately, the administration so far has failed to act, and, in the meantime, the crisis in North Korea continues to escalate. In recent days, we have seen reports that North Korea test-fired a new missile, evidently that regime's idea of an inauguration present for South Korea's incoming President. Just today, the newspapers contain reports that North Korea has restarted one of the reactors at its primary nuclear complex, a reactor that produces spent plutonium which can then be converted into weapons grade material.

Let's be clear about what this latest provocation means. It means North Korea could have a nuclear production line up and running and producing weapons grade nuclear material in a matter of months. It means the world's worst proliferator could have enough nuclear material to produce six to eight nuclear weapons by summer.

According to Brent Scowcroft, President George Bush's National Security Adviser, if we fail to act, it means ''We will soon face a rampant plutonium production program that could spark a nuclear arms race in Asia and provide deadly exports to America's most implacable enemies.''

Unfortunately, the administration continues to insist on downplaying this threat. These latest developments should confirm for anyone watching that this is a crisis that only grows with each day the administration fails to act. I come to the floor today to join with my colleague, the ranking member of the Armed Services Committee, to urge the administration to act now.

The first step toward action is to acknowledge there is a problem. Based on a series of administration statements that play down the threat posed by North Korea's actions, it appears many in the administration are not even willing to take this step. For example, for quite some time now, the administration refused to call this situation even a crisis.

Last month, North Korea announced its intention to withdraw from the Nuclear Non-Proliferation Treaty, the cornerstone of the world's nonproliferation efforts, and the response from Under Secretary of State John Bolton, ''Not at all expected,'' and on Monday after the missile test, the administration is quoted as saying that this was ''just a periodic event.'' Secretary Powell called the test ''not surprising and fairly innocuous.''

So what do we do? I believe we must begin by making certain we are on the same page as our allies. Failure to do so will only produce a failed policy. Unfortunately, while the administration says the right things about the importance of coalitions, it is unwilling or unable to do the right things to build a coalition.

The administration continues to insist on multilateral discussions with the North Koreans while our friends and others have consistently and repeatedly urged President Bush to engage in bilateral talks. Therefore, the administration must redouble its efforts with our allies in South Korea, Japan, with the Chinese, and the Russians.

Second, we must make it clear to the North Koreans that separating plutonium from the spent fuel rods at Yongbyon represents an unacceptable threat to our collective security. We should tell North Korea what we expect of them directly: That if it verifiably freezes all nuclear activities, we and our allies are prepared to discuss the full range of security issues affecting the peninsula, as well as other steps North Korea can take to reenter the international community.

This is not news to the administration. In fact, the President himself has suggested he is prepared to have just these kinds of talks.

Yet, I must say, regrettably, the administration still delays. It allows the crisis to deepen and relations with our friends who are most directly threatened by North Korea to suffer. In fact, what would reward North Korea is to continue to stand by while it builds a nuclear arsenal. The danger within North Korea is too urgent for the President to delay this any further.

Finally, let me also take advantage of having my colleague, Senator LEVIN, in the Chamber to discuss a recent exchange of letters with the administration on this issue. Senators LEVIN, BIDEN, and I laid out our concerns to the administration about its North Korean policies and provided recommendations in a series of letters. I recently received a response from Dr. Rice, and I ask unanimous consent to print our January 31 letter and Dr. Rice's February 10 response in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, January 31, 2003.

Dr. CONDOLEEZZA RICE,
National Security Adviser, The White House, Washington, DC.

DEAR DR. RICE: We wrote to you earlier this month about our increased concern regarding the crises on the Korean peninsula. Our concern has deepended significantly as a result of a report in today's New York Times, which was confirmed by the Administration, that the U.S. government has evidence that North Korea is removing spent nuclear fuel rods from storage. These rods, which had been securely stored under IAEA monitoring from 1994 until recently, reportedly contain enough plutonium to produce roughtly a half dozen nuclear weapons.

As alarming as this report is, we are just as troubled by the Administration's reported reaction to these developments. Prior to this disclosure, the Administration said nothing publicly or privately to Congress about these activities. According to comments attributed to senior Administration officials, the Administration has consciously decided to hold this information in an effort to avoid creating a crisis atmosphere and distracting international attention from Iraq.

This muted response to the world's worst proliferator taking concrete steps that could permit it to build a nuclear arsenal stands in stark contrast to the President's statement on Tuesday evening that ''the gravest danger in the war on terror . . . is outlaw regimes that seek and possess nuclear, chemical, and biological weapons.'' It is also increasingly difficult to square the Administration's rehtroic on Iraq and decades of U.S. policy aimed at discouraging the emergence of declared nuclear powers with its continued downplaying of the threat posed by North Korea's blatant disregard for international rules on proliferation.

As the crisis with North Korea continues to escalate, the Administration's policy has not gotten any clearer. The Administration's lack of a clear, consistent policy and our failure to take concrete steps to address this growing crisis has produced consternation and confusion. One result is that our allies in the region appear to be taking a course directly at odds with the Administration's latest pronouncements.

Given the stakes of the situation and the ongoing confusion about the Administration's policy, we request that you come brief the Senate as early as is practical to discuss that we know about North Korea['s latest actions and what the United States is doing in response.

We look forward to hearing from you as soon as possible

Sincerely,

TOM DASCHLE.
JOSEPH R. BIDEN, Jr.
CARL LEVIN.

THE WHITE HOUSE,
Washington, DC, February 10, 2003.

Hon. THOMAS A. DASCHLE,
Democratic Leader, U.S. Senate, Washington, DC.

DEAR MR. LEADER: Thank you for your letter regarding U.S. policy on North Korea.

I agree with you about the need to take effective action in light of North Korea's recent actions to restart its nuclear facilities at Yongbyon. The United States is working closely with friends and allies toward our objective of the elimination of North Korea's nuclear weapons program in a verifiable and irreversible manner.

However, I disagree with the assertion contained in your letter that, prior to the New York Times article on January 31 on recent North Korean activities, ''the Administration said nothing publicly or privately to Congress about these activities.'' I also reject any suggestion that the Administration consciously withheld information from Congress to avoid distracting attention from Iraq.

The Administration has regularly briefed and consulted Members of Congress regarding policy toward North Korea and Iraq. For example, Deputy Secretary Armitage briefed Senators on January 16 on recent intelligence on activities at North Korean nuclear facilities and steps taken by the Administration in response to these actions. He also testified before the Senate Foreign Relations Committee on February 4.

In addition, the CIA has routinely provided briefings and written reports to Members and its oversight Committees. CIA briefed Senate Foreign Relations staff on three occasions in December on North Korea WMD issues, and on January 29, published an article on North Korean nuclear-related activities in the Senior Executive Intelligence Brief (SEIB) that addressed the issues discussed in the New York Times on January 31. The January 29 article was one of nine such articles published in the SEIB on North Korea in January alone. The SEIB is delivered daily to the CIA's oversight Committees and to the Office of Senate Security where it is available to Senators and appropriately-cleared staff.

In the days and weeks ahead, it is my hope that we can work together to address the challenges we face on a range of critical national security issues, including North Korea and Iraq.

Sincerely,

CONDOLEEZZA RICE,
Assistant to the President for National Security Affairs.

Mr. DASCHLE. Unfortunately, little in Dr. Rice's letter addresses our policy concerns. Rather, the bulk of her comments are dedicated to rebutting a claim in our letter that Congress has not been adequately consulted about some explosive findings revealed in a January 31 New York Times article.

The article stated that the U.S. Government has evidence North Korea had begun moving spent fuel rods out of a secure storage area, a development that was subsequently confirmed by the administration. Movement of spent fuel rods would either suggest that North Korea was getting ready to reprocess that fuel to build new weapons or was trying to hide the spent fuel from the international community. In either case, this is a very significant finding that we believed then and still believe deserves to be brought to the Congress's attention.

While Dr. Rice rightly points out that Congress has been briefed on North Korea issues generally, including a briefing by Deputy Secretary Armitage on January 16, we are not aware of any administration briefing that provided us with information on this specific development prior to the New York Times story. And in recent testimony before the Senate Foreign Relations Committee, Deputy Secretary Armitage implicitly acknowledged that fact.

The reason to bring this up is because we are facing a crisis on the Korean peninsula, a crisis with extremely high stakes, a crisis that demands robust American response, a crisis that demands we be clear with each other and with the American people. Given the stakes of the situation and the ongoing confusion about the administration's policy, we should expect no less.

I yield the floor.

Mr. LEVIN. Mr. President, will the Democratic leader yield just for some questions?

Mr. DASCHLE. Before I yield the floor, I am happy to yield to the distinguished Senator from Michigan.

Mr. LEVIN. Is the Senator aware of a statement which was made before us—I do not know how he would be, but let me brief him on it. We had the head of the Defense Intelligence Agency in front of the Armed Services Committee a couple of days ago, and we asked him whether or not in his judgment there was a crisis on the Korean peninsula because of the actions of North Korea in removing these seals from the spent fuel, eliminating the cameras and kicking out the inspectors. Even though the administration is unwilling to put the label ''crisis'' on what is going on on the Korean peninsula, Admiral Jacoby was more than willing to say, yes, this is a crisis.

I am wondering if the Democratic leader would agree that part of the problem that we have in dealing with the North Korean situation is the unwillingness to see it for what it is, which is a major proliferation threat when there is a country that has been the world's greatest proliferator, including Libya and Iran, missiles and missile technology, when there is a country with a nuclear program that they acknowledge removes the inspectors from its country, whether or not that would represent progress if we could just at least get the administration to acknowledge what the head of the Defense Intelligence Agency says, which is that we have a crisis on the Korean peninsula?

Mr. DASCHLE. I think the Senator asks a very good question. This is more than just a semantical issue. Whether one calls it a crisis, an emergency, whatever volatile term one wishes to apply, clearly this deserves more of a response than this administration has provided.

I wonder what would have happened if Iraq had been the country with the evidence now to suggest that weapons of mass destruction, nuclear weapons, would be produced with the degree of certainty that we now see them in North Korea, what would the administration have said to that? If Iraq had fired a test missile within the last 2 weeks, what would the administration have said of that? My hunch, is that they would have used the word ''crisis'' and then some.

They have already claimed, of course, that North Korea is a member of the so-called axis of evil, an unfortunate term in my opinion. But to avoid using the word ''crisis,'' I believe, lends a real serious credibility question to the administration's foreign policy with regard to the region. This is a crisis. Every expert has acknowledged that it is a crisis. Unless we are willing to recognize the reality of the implications of this crisis, I believe the crisis will only worsen.

The Senator from Michigan has made a very important point with his question.

Mr. LEVIN. In addition to looking a problem square in the eye and not sugarcoating it, if we are going to solve it, another part of the administration's platform relative to Korea, or approach to the Korean problem, is to say that the multilateral approach is the right approach. I am always glad to hear when the administration is willing to work multilaterally. I have been a critic of the administration because their unilateral rhetoric activities, it seems to me, have been counterproductive in many parts of the world. So whenever the administration talks about a multilateral approach or consulting with allies and friends, that is good news. But when they do the consultation, when they talk to South Korea, both its former President and its new President, as well as when they talk to China, as well as when they talk to Japan, as well as when they talk to other allies in the area, they are told the same thing. When they do use the multilateral approach, they are told: Engage in direct discussions with North Korea. As a matter of fact, the representative of the new President of South Korea, the special envoy of new President Roh, visited us. His name is Dr. Chyung, and he visited with us on February 3.

That was, again, the open advice, he said, of the South Korean Government, is to have the United States talk directly with North Korea so that they can hear from us what our concerns are; so that both sides can avoid any kind of miscalculations; so that we do not fuel the paranoia this isolated regime has. They are paranoid. They are isolated. They actually believe we might strike them with one of our preemptive strikes. They actually believe it.

So the advice we are getting when we talk to our allies and follow this multilateral approach is engage with North Korea, and yet we refuse to do so.

I am wondering whether the Senator would agree that it is not only important that we consult with allies, not necessarily follow the advice but at least give serious consideration to the advice they give us when they talk to us about a direct engagement with North Korea to avoid miscalculation, so that the North can hear directly from us what our major concerns are?

Mr. DASCHLE. I appreciate the question posed by the Senator from Michigan. This whole experience has turned logic on its head. We have 220,000 troops in the gulf. We are told that there is almost an inevitability of war. We are told that the reason for this near inevitability is because of weapons of mass destruction that we have yet to find in Iraq and because of an unstable leader in Iraq.

These assertions have required the administration to go to great lengths to try to prove that their findings are ones that could be recognized by the world community. With all of their best effort, they have yet to demonstrate to the satisfaction of some of our allies that the threat exists to the extent the administration perceives it, and yet there is a clear set of circumstances that are undeniable in North Korea. There is a very questionable leader spurring development of nuclear weapons in the most rapid way, which we know could be sold quickly to terrorist organizations and used against us and the world community. Yet this administration chooses to ignore it.

The Senator asks the question, why would we not engage the community and recognize the importance of confronting North Korea? The administration says the answer to that is they do not want to reward bad behavior.

I argue that we are rewarding bad behavior by ignoring the circumstances as this administration has chosen to do. What could be worse behavior than what is going on right now?

As I understand it, we began to reship food assistance to the North Korean people within the last few days. We have no real guarantee that aid is going to get to the people, but it is a very unusual message they are sending to both Iraq and North Korea. Of all those who would be most confused it would be our allies. How do they explain all of this? What credibility do we have with them as we attempt to rationalize this odd position we find ourselves in today?

I appreciate the question, and I would simply say to my colleague that it begs further explanation by the administration which, again, because they refuse to call this a crisis, they have yet to provide.

Mr. LEVIN. This administration has blown hot and cold when it comes to policy relative to North Korea.

I just have one final question.

The Democratic leader points out just how confusing a policy it is, not just for North Korea but for our own allies. Our ally with the most at stake on the Korean peninsula is South Korea. They could be destroyed if there is a miscalculation. Their capital is within range of tens of thousands of artillery of North Korea.

On March 6, 2001, on the eve of a summit between then South Korean President Kim Jong-Il and President Bush, Secretary of State Powell said we plan to engage with North Korea and to pick up where President Clinton and his administration left off.

Within 24 hours was the Secretary of State's statement that we were going to engage with North Korea and pick

up where the Clinton administration left off because the Clinton administration obtained the framework agreement that resulted in the canning of that very material which is so dangerous which contains plutonium. Within 24 hours, at the summit the next day, President Bush basically said: We are not going to have any discussions with North Korea. We are not picking up where the Clinton administration left off. We do not trust North Korea.

No kidding. That is a mild statement, that we do not trust North Korea. If we did not talk to people we did not trust, we would not be talking to half of the world, including some of the most dangerous people in the world.

Talking to people does not mean we are going to reward anything. It simply means they will hear directly, eyeball to eyeball, from us as to what our concerns are, and also why we do not threaten them, and why, if they will terminate their nuclear program, they can rest assured they will get an agreement from us that there is not going to be any active aggression against them.

The blowing hot and cold, the erratic policy, the undermining not just of our own Secretary of State 24 hours after he said we would continue a policy, but undermining our South Korean allies with so much at stake, it seems to me has contributed to a very uncertain policy on the Korean peninsula, has sowed the seeds of confusion, and fueled and contributed to the paranoia that already existed in spades in North Korea.

I have been to Yongbyon, the place in North Korea where they were canning those fuel rods, where they had sealed them. I don't know that any other Member of the Congress got there, but I got there a couple years ago. I watched the International Atomic Energy Agency as they were sealing those fuel rods. That was a very positive thing to watch, to actually see, under IAEA inspection and supervision, those incredibly dangerous nuclear materials being canned instead of threatening to the rest of the world as potential proliferated material, to actually see it put under the supervision of the IAEA.

That is now out the window. We are starting from scratch. I understate my feelings on the matter when I say the Senator, the Democratic leader here, has so accurately stated the fact that we have a problem. Step 1 is to recognize we indeed have a crisis. Step 2 is not just to consult with allies but to seriously consider what they recommend when they talk about having direct engagement with the North Koreans.

I thank the Democratic leader for his constant determination to keep this Korean peninsula crisis in front of us. We cannot lose sight of it. It is a greater threat than Iraq because in North Korea you have a known proliferator who has removed the inspectors and who has nuclear material which could be so easily distributed, shipped, or sold to people who could do great harm with it.

I thank my friend from South Dakota.

Mr. DASCHLE. I thank the distinguished Senator from Michigan.

We can learn a lot from history. History, for most of my lifetime, involved a cold war, a cold war with an archenemy—the Soviet Union—which had thousands of nuclear warheads pointed toward the United States. They posed an imminent threat that could at any moment destroy all of civilization.

We made the choice, for good reason, Republican and Democratic administrations made the choice, that rather than engage in conflict, we would contain, negotiate, disarm, and ultimately wear down those leaders of the Soviet Union. That is ultimately what happened. The Soviet Union collapsed, negotiations for disarmament continued, and I recognize the contribution of many Presidents, from Harry Truman on.

But it was Ronald Reagan who said: Trust but verify. He did not say: I don't trust the Soviet Union, so I'm not going to enter into dialog with them. He was criticized at times, but he said: I'm going to engage in dialog. I'm going to continue the effort of my predecessors. I'm going to trust. But then I'm going to verify.

What the Senator from Michigan noted is that a couple of years ago that verification process was underway. We trusted. And we verified. His site visit was an indication of that verification.

I can only hope that those responsible for the day-to-day decisions made with regard to U.S. foreign policy will recognize the importance of past precedent, that we engage our enemies, we engage those whom there is ample reason to distrust, but we recognize that without some communication, without some engagement, the only other option is conflict.

The only other option is to see what is happening today. Nuclear weapons are being constructed. Nuclear weapons are being stockpiled. Nuclear weapons could be shipped. Nuclear weapons could be used not only in the region but against this country, as well. Every day we delay, every day we lack the will to confront and communicate, every day we lack the desire to verify, every day we create a problem more complex for future leaders and for future American policy.

I hope this administration will very carefully reconsider their position. I hope they will listen to our allies. I hope they will engage the North Koreans. I hope they can give us greater appreciation with greater clarity of their intentions with regard to that part of the world.

I yield the floor.

LEGISLATIVE SESSION

MORNING BUSINESS

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate now return to legislative session and go into a period of morning business.

The PRESIDING OFFICER (Mr. CHAMBLISS). Without objection, it is so ordered.

IRAQ

Mr. BENNETT. Mr. President, this morning's Washington Post has an especially long editorial. Indeed, it takes up the entire length of the editorial page. It is entitled ''Drumbeat on Iraq, a Response to Readers.''

I have a dear friend in Utah who wrote me. She was distraught—is distraught, I am sure—about the prospect of going to war and expressed a great many concerns. I have been in the process of constructing what I hope is a responsible and thoughtful response to her concerns. As I read the editorial in this morning's Washington Post, I found that it does a better job than I could do of summarizing many, if not most, of the issues about which she is concerned. I want to read from sections of the editorial and then ask unanimous consent that it be printed in the RECORD at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BENNETT. In the editorial they say:

> The right question, though, is not, ''Is war risky?'' but ''Is inaction less so?'' No one can provide more than a judgment in reply. But the world is already a dangerous place. Anthrax has been wielded in Florida, New York and Washington. Terrorists have struck repeatedly and with increased strength over the past decade. Are the United States and its allies ultimately safer if they back down again and leave Saddam Hussein secure? Or does safety lie in making clear that his kind of outlaw behavior will not be tolerated and in helping Iraq become a peaceable nation that offers no haven to terrorists? We would say the latter. . . .

As I say, I could not have put it better, which is why I have quoted it. I have raised the question on the floor before: What are the consequences if we do not follow through in Iraq? Some have said let's just leave the troops in place. And that means Iraq remains contained.

Leaving the troops in place is not an option. We must understand that the troops are where they are, poised to move into Iraq, because of the agreement of the governments in Qatar, Turkey, and Saudi Arabia, among others. Those governments will not allow our troops to remain on their soil indefinitely. They will not allow those troops to remain there while we contain Saddam Hussein for 6 months or 12 months or 12 years, which has been the period of ''containment'' that we have seen up until now. We must either withdraw those troops and say we are

not going to move ahead militarily or, if Saddam Hussein does not disarm in accordance with the U.N. resolutions, those troops will move forward into his territory. We have no other choice: Move forward or withdraw.

For those who say the inspectors should be allowed to do their job, we must understand that the only reason the inspectors are there is because the troops are there. So we are coming down to the decision point, that is very clear.

Again, back to the editorial:

Some argue now that, because Saddam Hussein has not in the intervening half decade used his arsenal, Mr. Clinton was wrong. . . .

I should say that the editorial quotes President Clinton as outlining the case against Saddam Hussein in 1998.

Some would argue now that, because Saddam Hussein has not in the intervening half decade used his arsenal, Mr. Clinton was wrong and the world can rest assured that Iraq is adequately ''contained.'' Given what we know about how containment erodes over time; about Saddam Hussein's single-mindedness compared with the inattention and divisions of other nations; and about the ease with which deadly weapons can move across borders, we do not trust such an assurance. Mr. Clinton understood, as Mr. Bush understands, that no president can bet his nation's safety on the hope that Iraq is ''contained.'' We respect our readers who believe that war is the worst option. But we believe that, in this case, long-term peace will be better served by strength than by concessions.

There is one other issue that was raised by my friend in Utah to which the editorial does not speak. This is the issue of first strike. My friend says we cannot cross the line of having the United States be involved in a first strike against a nation that has not attacked us.

One of the arguments I have heard on this score is that if we do it, we will set a precedent that will allow other nations to do it. Other nations that we do not want to do it will say we can do it because the United States did.

If I may, without being disrespectful to that argument, I would point out that Adolph Hitler did not need a precedent from the United States to attack Poland. He made up his own excuse. He pretended that Poland had attacked him. He dressed prisoners in Polish military uniforms, murdered them, and then had them found by German soldiers on German soil who said they were shot as they tried to invade Germany.

The setting of a precedent by the United States or the not setting of a precedent by the United States will have absolutely no effect on the actions of a brutal dictator who decides to attack his neighbors in a first strike fashion. Saddam Hussein didn't quote precedent when he attacked Kuwait in the early 1990s. He went ahead and did it, and would have done it again whether he had precedent or not.

Having said that, however, I want to review a little bit of American history. It may not be history of which we are proud, for those who say we have never committed a first strike, but it is history nonetheless of which we must be aware. I have not taken the time to research all examples of this because my memory provides me with enough to make the point.

I remember when Lyndon Johnson sent the Marines into the Dominican Republic, for what purpose I cannot recall. But this was not a country that had attacked us and we sent military forces in there on the grounds that there was some American interest that had to be protected.

Ronald Reagan sent the Marines into Grenada. His reason was that the legitimate Government of Grenada requested it.

In his book, ''The Rise and Fall of the Soviet Empire,'' Brian Crozier referred to the American military action in Grenada as one of the key turning points in the cold war. He said if the United States had not moved into Grenada and removed the Communist government there, the cold war would have lasted considerably longer and been more devastating.

There was no international clamor against President Reagan when he did this. He believed it was in America's best interests, and at least one historian has said it was not only in America's best interests, it was in the world's best interests for Ronald Reagan to have done what he did in Grenada.

In the waning days of his Presidency, the first President Bush sent American troops into Somalia. Somalia had not attacked us and did not represent any threat. The troops were there presumably on a humanitarian mission, but they were sent in to deal with a military situation in that country that President Bush thought had to be dealt with. Those troops were withdrawn by the Clinton administration. But, once again, this was not a circumstance where America had been attacked but one where an American President sent American troops and there was no international outcry, no international complaint.

Shortly after I came to the Senate, President Clinton invaded Haiti. Our former colleague, Sam Nunn, was in Haiti just prior to the time when the American military entered that country, and he debriefed a number of us after he came back. He pointed out that the only reason there was not bloodshed when the American troops entered Haiti was because the former Chairman of the Joint Chiefs of Staff, Colin Powell, went with Senator Nunn and former President Jimmy Carter to Haiti and General Powell was able to convince the Haitian general in charge of their military that it was not dishonorable for the Haitian general to save the lives of his troops and allow the Americans to come in without military opposition.

As I recall it from Senator Nunn, the Haitian general was determined that it was his duty as a military man to resist any invasion of his country, no matter how hopeless that resistance might be. And he gathered his family around him, his wife and his children, hugged them together and said: This is our last night on Earth because tomorrow the Americans are invading and I will be killed.

As I say, General Powell sat down with the Haitian general, convinced him that his first duty as a military officer was to protect the lives of his troops, and that he was not doing a dishonorable thing if he did not mount a hopeless resistance against the Americans.

Once again, there was no international outcry against the American decision to send troops into Haiti. Looking back on it, it was not necessarily a wise thing to have done. We replaced a brutal dictator much beloved by American conservatives with a brutal dictator much beloved by American liberals. But the average Haitian has not seen any improvement in his or her lifestyle. Indeed, those who have been to Haiti recently tell me things are worse now than they were before the Americans invaded.

Then we have the former Yugoslavia, a country that represented no threat to the United States and had not attacked the United States, but the United States led a national coalition in war upon that nation.

Why did we do it? We did it because, under Milosevic, that nation had produced enough casualties within its borders to begin to approach 20 percent of the size of the Holocaust. They killed that many of their own people, and the Americans felt that was a serious enough challenge to require us to go ahead.

Now we have just heard a speech by the Senator from Michigan with respect to North Korea. We are being asked, Why are we not doing more with respect to North Korea? I will not respond to the Senator from Michigan or the Democratic leader in that vein. But I will point out that the attitude around the world and, indeed, here in the Senate is why the United States isn't taking care of this. If I might add one word to that question, Why isn't the United States taking care of this unilaterally? In other words, the United States should handle this all by themselves, according to speeches that are made here and in the world community.

I run through this history simply to make this point: It is not accurate to say the proposed action in Iraq is either unprecedented in American history or illegal under American or international law. The action that is proposed with respect to Iraq is in the tradition of these humanitarian missions that I have described.

Some of them have gone wrong. Some of them have turned out not to produce a humanitarian result. But in every case there was no prior complaint raised against the proposal that we do this on the ground that this was an unacceptable first strike against a

defenseless neighbor. In every circumstance, it went forward with full approval. I voted against the move into Haiti. But the President appropriately came to the Congress and got approval before he did it.

President Bush has come to the Congress, and by a 77–23 vote in this body and an equally lopsided vote in the other body, has approval before he goes into Iraq. This is not a stealth attack like Pearl Harbor under the cover of night. This is something that has been debated and laid before the United Nations. The United Nations, by a 15–0 vote in the Security Council, announced to Iraq if she did not disarm, she would face serious consequences, and serious consequences in United Nations speak means war. This is not something that is done hidden or in a corner or in the dark.

So we come back now to the fundamental question: Is it safer to go ahead with an operation in Iraq than it is to pull down the American troops and bring them home? I agree with the editorial writers of the Washington Post. This is an agonizing decision. This is not one to be made lightly, and I am sure from conversations with him that the President is not going to make it lightly. He is going to weigh all of the consequences. But I believe in the end he will come to the same conclusion that the Washington Post editorial writers have come to and that I have come to. Whatever the unknowns on either side, the present evidence suggests that the most dangerous thing we could do with respect to the situation in Iraq is to back down if Iraq does not comply with the United Nations resolution. To pull our troops out of Iraq does not comply with the demands that the world has made upon it. The safest thing to do if Iraq does not comply is to carry through with the resolution that was adopted on this floor by an overwhelming margin, adopted in the Security Council of the United Nations unanimously, and not hold back.

I yield the floor.

[From the Washington Post, Feb. 27, 2003]

''DRUMBEAT'' ON IRAQ? A RESPONSE TO READERS

''I have been a faithful reader of The Washington Post for almost 10 years,'' a recent e-mail to this page begins. ''Recently, however, I have grown tired of your bias and endless drumbeating for war in Iraq.'' He's not the only one. The national and international debate over Saddam Hussein's weapons of mass destruction, and our editorials in favor of disarming the dictator, have prompted a torrent of letters, many approving and many critical. They are for the most part thoughtful and serious; the antiwar letters in particular are often angry and anguished as well. ''It is truly depressing to witness the depths Washington Post editors have reached in their jingoistic rush to war,'' another reader writes. It's a serious charge, and it deserves a serious response.

That answer, given the reference to ''Washington Post editors,'' probably needs to begin with a restatement of the separation at The Post between news and editorial opinion functions. Those of us who write editorials have no influence over editors and reporters who cover the news and who are committed to offering the fairest and most complete journalism possible about the standoff with Iraq. They in turn have no influence over us.

For our part, we might begin with that phrase ''rush to war.'' In fact there is nothing sudden or precipitous about our view that Saddam Hussein poses a grave danger. In 1990 and 1991 we supported many months of diplomacy and pressure to persuade the Iraqi dictator to withdraw his troops from Kuwait, the neighboring country he had invaded. When he failed to do so, we supported the use of force to restore Kuwait's independence. While many of the same Democrats who oppose force now opposed it then also, we believe war was the correct option—though it was certainly not, at the time, the only choice. When the war ended, we supported—in hindsight too unquestioningly—a cease-fire agreement that left Saddam Hussein in power. But it was an agreement, imposed by the U.N. Security Council, that demanded that he give up his dangerous weapons.

In 1997 and 1998, we strongly backed President Clinton when he vowed that Iraq must finally honor its commitments to the United Nations to give up its nuclear, biological and chemical weapons—and we strongly criticized him when he retreated from those vows. Mr. Clinton understood the stakes. Iraq, he said, was a ''rogue state with weapons of mass destruction, ready to use them or provide them to terrorists, drug traffickers or organized criminals who travel the world among us unnoticed.''

When we cite Mr. Clinton's perceptive but ultimately empty comments, it is in part to chide him and other Democrats who take a different view now that a Republican is in charge. But it has a more serious purpose too. Mr. Clinton could not muster the will, or the domestic or international support, to force Saddam Hussein to live up to the promises he had made in 1991, though even then the danger was well understood. Republicans who now line up behind President Bush were in many cases particularly irresponsible; when Mr. Clinton did bomb Iraqi weapons sites in 1998, some GOP leaders accused him of seeking only to distract the nation from his impeachment worries. Through the end of Mr. Clinton's tenure and the first year of Mr. Bush's presidency, Saddam Hussein built up his power, beat back sanctions and found new space to rearm—all with the support of France and Russia and the acquiescence of the United States.

After Sept. 11, 2001, many people of both parties said—and we certainly hoped—that the country had moved beyond such failures of will and politicization of deadly foreign threats. An outlaw dictator, in open defiance of U.N. resolutions, unquestionably possessing and pursuing biological and chemical weapons, expressing support for the Sept. 11 attacks: Surely the nation would no longer dither in the face of such a menace. Now it seems again an open question. To us, risks that were clear before seem even clearer now.

But what of our ''jingoism,'' our ''drumbeating''? Probably no editorial page sin could be more grievous than whipping up war fever for some political or trivial purpose. And we do not take lightly the risks of war—to American and Iraqi soldiers and civilians first of all. We believe that the Bush administration has only begun to prepare the public for the sacrifices that the nation and many young Americans might bear during and after a war. And there is a long list of terrible things that could go wrong: anthrax dispersed, moderate regimes imperiled, Islamist recruiting spurred, oil wells set afire.

The first question, though, is not ''Is war risky?'' but ''Is inaction less so?'' No one can provide more than a judgment in reply. But the world is already a dangerous place, Anthrax has been wielded in Florida, New York and Washington. Terrorists have struck repeatedly and with increasing strength over the past decade. Are the United States and its allies ultimately safer if they back down again and leave Saddam Hussein secure? Or does safety lie in making clear that his kind of outlaw behavior will not be tolerated and in helping Iraq become a peaceable nation that offers no haven to terrorists? We would say the latter while acknowledging the magnitude of the challenge, both during and especially after any war that may have to be fought. And we would say also that not only terrible things are possible: To free the Iraqi people from the sadistic repression of Saddam Hussein, while not the primary goal of a war, would surely be a blessing.

Nor is it useful merely to repeat that war ''should only be a last resort,'' as the latest French-German-Russian resolution states, or that, as French President Jacques Chirac said Monday, Iraq must disarm ''because it represents a danger for the region and maybe the world . . . But we believe this disarmament must happen peacefully.'' Like everyone else, we hope it does happen peacefully. But if it does not—if Saddam Hussein refuses as he has for a dozen years—should that refusal be accommodated?

War in fact has rarely been the last resort for the United States. In very recent times, the nation could have allowed Saddam Hussein to swallow Kuwait. It could have allowed Slobodan Milosevic to expel 1 million refugees from Kosovo. In each case, the nation and its allies fought wars of choice. Even the 2001 campaign against Afghanistan was not a ''last resort,'' though it is now remembered as an inevitable war of self-defense. Many Americans argued that the Taliban had not attacked the United States and should not be attached; that what was needed was a police action against Osama bin Laden. We believed they were wrong and Mr. Bush was right, though he will be vindicated in history only if the United States and its allies stay focused on Afghanistan and its reconstruction.

So the real questions are whether every meaningful alternative has been exhausted, and if so whether war is wise as well as justified. The risks should be minimized. Everyone agrees, for example, that the United States would be stronger before and during a war if jointed by many allies, and even better positioned if backed by the United Nations. If waiting a month, or three months, would ensure such backing, the wait would be worthwhile.

But the history is not encouraging. The Security Council agreed unanimously in early November that Iraq was a danger; that inspectors could do no more than verify a voluntary disarmament; and that a failure to disarm would be considered a ''material breach.'' Now all agree that Saddam Hussein has not cooperated, and yet some countries balk at the consequences—as they have, time and again, since 1991. We have seen no evidence that an additional three months would be helpful. Nor does it strike us as serious to argue that the war should be fought if Mr. Chirac and German Chancellor Gerhard Schroeder agree, but not if they do not. If the war is that optional, it should not be fought, even if those leaders do agree; if it is essential to U.S. national security, their objections ultimately cannot be dispositive.

In 1998, Mr. Clinton explained to the nation why U.S. national security was, in fact, in danger. ''What if he fails to comply and we fail to act, or we take some ambiguous third route, which gives him yet more opportunities to develop this program of weapons of

mass destruction? . . . Well, he will conclude that the international community has lost its will. He will then conclude that he can go right on and do more to rebuild an arsenal of devastating destruction. And some day, some way, I guarantee you he'll use the arsenal.''

Some argue now that, because Saddam Hussein has not in the intervening half-decade use his arsenal, Mr. Clinton was wrong and the world can rest assured that Iraq is adequately ''contained.'' Given what we know about how containment erodes over time; about Saddam Hussein's single-mindedness compared with the inattention and divisions of other nations; and about the ease with which deadly weapons can move across borders, we do not trust such an assurance. Mr. Clinton understood, as Mr. Bush understands, that no president can bet his nation's safety on the hope that Iraq is ''contained.'' We respect our readers who believe that war is the worst option. But we believe that, in this case, long-term peace will be better served by strength than by concessions.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I send a resolution to the desk and ask unanimous consent that it be held at the desk.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. SANTORUM. Thank you, Mr. President.

FRED McFEELY ROGERS

Mr. SANTORUM. Mr. President, it is with great sadness that I rise tonight on the Senate floor to talk about the life of Fred Rogers from my hometown of Pittsburgh, PA. Mr. Rogers died today of stomach cancer. It is a very sad time for all of us—at least to my generation—who remembers Mr. Rogers from public television, and certainly from my experience with him and the wonderful work that he did for children not just all over the country, frankly, but all over the world, certainly, and very importantly to the people of southwestern Pennsylvania.

In fact, I had the pleasure and the honor of having lunch with him in the Senate dining room just a couple of months ago around Christmas before he found out that he was stricken with stomach cancer. He was here to talk about, predictably, what we can and should be doing to help create a culture that is more nurturing to children in the United States of America.

In times when just about every figure in public life has some controversy surrounding them, he is someone who throughout his life escaped that controversy and stood as a beacon of caring, compassion, and thoughtfulness to parents and children alike.

Mr. Rogers was born in Latrobe, PA, south side of Pittsburgh in 1928. He married his wife 51 years ago, back in 1952. His wife Joanne survives him today.

Very early in his career he had a gift for the media and a heart for trying to reach children and touch children and educate and nurture children through the media. He worked in a variety of different things. But in 1966, he created and hosted ''Mr. Rogers' Neighborhood.'' Before that, he worked on a series in Canada for the CBC. And he worked at WQED, which is one of the first public broadcasting stations in the country.

We are very honored that WQED is in Pittsburgh. We are also very proud of the fact that the first radio station in the country was KDKA in Pittsburgh.

We in Pittsburgh are very proud of WQED and the great work that Fred Rogers did in putting together the first children's program there. Even before it was on the air he started producing programming for that station. I think it was called ''The Children's Corner.'' It became known almost 10 years later, in 1966, as ''Mr. Rogers' Neighborhood.'' It was actually created back in 1955. There were characters such as ''Daniel S. Striped Tiger,'' ''X the Owl,'' ''King Friday XIII,'' ''Henrietta Pussycat,'' and ''Lady Elaine Fairchild.''

For many of these characters, we have puppets in my conference room to celebrate the contribution Fred Rogers has made not just to the people of Pennsylvania but to the people of this country.

And that program, ''Mister Rogers' Neighborhood,'' had the very famous song: ''Won't you be my neighbor?'' and Mr. Rogers coming in, and putting on that cardigan sweater and tennis shoes, inviting you into his home, the ''Land of Make Believe,'' and the trolley. All of those things are such wonderful memories for me and for generations, and which is continuing today. Even though the program has now been out of production for a couple of years, there are over 900 episodes of ''Mister Rogers' Neighborhood'' that PBS has and distributes on a regular basis all over the country.

Mr. Rogers will continue to touch future generations of children, particularly young children, in that nurturing and reassuring way he had with the very young. In many cases, a lot of kids sit in front of television; mom is busy; dad is at work; or mom and dad are both at work. And there was always a reassuring and comforting voice, someone who reassured them of their values as a person, their own self-worth, their ability to accomplish things, to dream great dreams.

Mr. Rogers—in a culture that is not always so positive, and certainly not very reassuring—was just that. He was a positive example of what a good father, a good parent, can and should be, and what good adults and what adults generally can be to our children in his neighborhood—I would argue, in our neighborhood—and that we, too, can learn from Fred Rogers, can learn from the kindness and the gentility and the wholesomeness he showed to America's children and to America's parents.

We will miss Fred Rogers. I can tell you, Pittsburgh is going to greatly miss this legend in our town. All of those shows were filmed in Pittsburgh, PA, at WQED. And his neighborhood, which is the Oakland, Shadyside, and Squirrel Hill, which is where WQED is located, where much, I am sure, of his ideas came from, is a place that is lesser today than it was yesterday because of this great man passing.

But the joy in getting up and talking about Fred Rogers is what he has left. Oh, that all of us could say we have touched so many and influenced, in such a positive way, literally millions of children in this country and around the world and have made a positive contribution in serving this country.

Fred Rogers was a Presbyterian minister who found that God's calling to him was to serve children through the media. And I think God, this morning, when he arrived in Heaven, said: Well done, my good and faithful servant.

Mr. REID. Will the Senator yield for a question?

Mr. SANTORUM. I am happy to yield.

Mr. REID. The Senator is absolutely right, Mr. Rogers is somebody we all knew, you in a little bit of a different reference than I because you really did know him. But the fact that the Senator from Pennsylvania actually knew him does not mean that the rest of us did not really know him. He was a unique individual, as you said. He walked in, put on that sweater, with that very bad voice that we all remember.

The reason I wanted to interrupt the Senator before he went to the closing script is this has been a contentious week in the Senate, and I could not think of a more peaceful man to end the week than Fred Rogers. So I appreciate very much the Senator coming to the floor as quickly as he did, upon the death of this wonderful man, and ending the Senate today with memories of a peacemaker.

Mr. SANTORUM. I thank the Senator from Nevada.

I want to share another moment where I had a chance to be with Fred Rogers. And it was—oh, I wish I could remember exactly how many years ago it was. It was probably about a dozen or so years ago, give or take a couple years.

Every year, in Pennsylvania, the business world and the political world, right before Christmas, goes up to New York for the Pennsylvania Society. It has been going on now for over 100 years.

There is a dinner on a Saturday night. The industrialists used to go up there to that with their families and friends. And it has turned into a big event, a bipartisan political event as well as a business event. We have a big dinner. I think we are the longest running annual dinner at the Waldorf Astoria. It has been for over a 100 years now.

I remember they give a gold medal to a famous Pennsylvanian. One of the years I happened to be there, in the late 1980s, it was Fred Rogers who received that award. He got up to speak.

And there were 3,000 people in the Waldorf Astoria Ballroom. I had been, and have been since, to many of these dinners. It is quite unusual that you can even hear the speaker usually by halfway through the speech. We have all been at dinners like that.

I remember sitting there, and Fred Rogers was talking about how important it is to be a positive influence in one child's life. Now, we all talk about mentoring and the importance of mentoring. It is sort of a new and current thing to talk about. Well, Fred was ahead of his time. He talked about that.

He talked and gave the example of someone in his life who meant something to him. It was a rivetting and compelling speech. I remember he stopped and said: I am going to stop for a minute. And I want you to all think about someone who made a difference in your life. I am going to stop for 1 minute, and I just want you to think about that person, what they have meant to you, and whether you can be that person for somebody else.

And he stopped talking. And for a minute, in that ballroom, with 3,000 people in it, you could have heard a pin drop. That was the power of someone who not only reached out to children, and spoke and preached a good talk, but someone who lived it, and who was sincere, and acted it out in his life. Obviously, it had an impact on me because I remember it to this day. It inspired me to try to make that contribution to someone.

Mr. DAYTON. Will the Senator yield for another question?

Mr. SANTORUM. I am happy to yield.

Mr. DAYTON. I thank the Senator for bringing this great man to our attention. I was not aware, until the Senator spoke, about his passing.

I, like so many others, felt I knew this man indirectly, as the father of two sons, who are now 19 and 22 years old. So I reckon it was about for 20 years that I watched that show. And I think I looked forward to it as often as my sons did.

The Senator captured very eloquently and sensitively the spirit of a very gentle soul, yet a very visionary man.

I recall going to the National Education Foundation dinner here just after I arrived 2 years ago, and there were not as many people there as the Senator described in the event he mentioned, but there were a good 700, 800 people.

Mr. Rogers was receiving the honor, Award of the Year. The first thing I noticed was, when he came out, everybody knew the song, and they all sang that song. As the Senator said, you could have heard a pin drop when he spoke. And he spoke in the same general way to adults as he did to kids.

I say to the Senator, are there any other neighborhoods like that in Pittsburgh you could send to the rest of the country? If so, we can use a few.

Mr. SANTORUM. We have lots of wonderful neighborhoods. And like Minnesota, we have a lot of old, wonderful, ethnic neighborhoods. I think Mr. Rogers reflected that spirit in a lot of those communities—the close-knit, caring spirit, looking after your neighbor in those communities.

Some may suggest that ''Mister Rogers' Neighborhood'' was from a bygone era that does not exist anymore, that that neighborhood isn't around anymore. Well, I make the argument that the neighborhood is what the neighbors make it, and that he sets a pretty good model for what neighbors should be, and neighborhoods can be, and, hopefully, again someday will be.

ADDITIONAL STATEMENTS

IN HONOR OF PENNSYLVANIA'S HISTORICALLY BLACK UNIVERSITIES

● Mr. SANTORUM. Mr. President, in celebration of Black History Month, I rise today to honor Lincoln University and Cheyney University of Pennsylvania for the contribution they have made in the education of African-Americans over the past two centuries. These two institutions of higher learning are charter members of a group of schools known as Historically Black Colleges and Universities (HBCUs) and they have had a seminal role in our Nation's academic heritage.

The Commonwealth of Pennsylvania is proud to be the birthplace of secondary education for African-Americans in this country. Cheyney University, originally named the Institute for Colored Youth in Pennsylvania, was founded in 1837 as an elementary and high school for young blacks. The Institute was a successful, free school for young students and, after some years, became a teachers college. Cheyney's charter mission was to instruct African descendants in mechanical arts and agricultural trades so that they might teach their peers to compete and be self-sufficient in the post-slavery economy. Today, Cheyney educates men and women in more than thirty disciplines and maintains its legacy of providing for minorities of various cultures and nationalities.

Lincoln University rivals Cheyney for the title of oldest historically black university. Initially founded as the Ashmun Institute, the school opened in 1854 as the very first place of ''higher education in the arts and sciences for male youth of African descent.'' In addition to the important message of educational equality and opportunity through learning these universities continue to convey, there are thousands of Lincoln and Cheyney alumni who illustrate the great gift these schools have given the African-American community in particular and the academic community at large. Among these graduates are Supreme Court Justice Thurgood Marshall, author Langston Hughes, former Nigerian President Nnamdi Azikiwe, journalist Ed Bradley, and publisher Robert Bogle, to name but a few.

HBCUs are an integral aspect of what has always been the American dream, an ideal that sees education and industry as the tools for succeeding in life and pursuing one's talents and interests. The livelihood of institutions such as Lincoln and Cheyney Universities is central to the preservation of this ideal and with it, our national heritage. Our Government has a responsibility to help sustain the legacy of these schools, and I am proud to support legislation to this end. Bills that bring 21st Century technology to tomorrow's graduates and funds intended to keep quality, affordable higher education available to all of our Nation's young students are part of the process. I encourage my Senate colleagues to join me in recognizing the importance of our country's HBCUs. I hope that together we can celebrate their history and ensure their future for the posterity of the Nation's higher education system.●

EMILY LANCE HAS A BLAST AT SPACE CENTER

● Mr. MILLER. Mr. President, today I share with my colleagues the thoughts of Emily Lance, an 8-year-old third grader at Calhoun Elementary School, who had the privilege of watching the launch of the Space Shuttle *Columbia*:

We left at 6 o'clock Tuesday morning, Jan. 14, to see the Space Shuttle launch. But first we had to get there. It was a 10-hour drive. We were staying at the Hilton.

Before we could get to the hotel, we had to go through security because the Israeli ambassador and the astronauts' families were staying there. Finally, we got to the room. Then we found our bathing suits and went out to the beach.

That's when we saw the horse patrol. They were very pretty horses. We found a lot of shells at the beach. Then we went back to our room, had dinner, and went to bed.

We woke up early and went to the Kennedy Space Center. We checked in the protocol office and got our mission briefing passes. Then we had to go through NASA security.

Going to the briefing wasn't all we did. First we checked out the Rocket Garden. It was huge and had replicas of the rockets that went into space.

Then it was time for the briefing. First we got our seats. There were a lot of people. The briefing was very interesting.

They announced that the shuttle was to go off at 10:39 Thursday morning. I learned a lot at the briefing.

After the briefing we went to the Mad Mission to Mars. It was 3–D and so cool. They called for volunteers, and I was picked. I was chosen to be the planet Venus. Then we were blasting off to Mars. Then it was the end of the show. After that we went to eat.

Then we got to see a movie called ''The Dream Is Alive.'' I liked it very much. Then it was time to go back to the hotel. But before we did, I got to go get Space Dots. That is ice cream in little balls, also known as Dipping Dots.

Then it was time to go home after a great day at the Kennedy Space Center. I couldn't

wait until tomorrow. It was going to be awesome.

After dinner I had to go to bed early. We had to get up at 5 in the morning. On the way to Kennedy Space Center, we stopped at Waffle House to get some breakfast.

When we got there we went to the Protocol Office and got our bus passes so we could get to the grandstand.

While we were standing in line, we met this man who works at NASA in California. He was really excited, too. Then I noticed he had a really cool necklace and on it was the word NASA. It also had a blue flashing light.

I told him it was really cool. Then he asked me if I really liked it. I said yes, then he gave it to me. I was so happy.

After that, he showed me his official NASA badge. Then we got on the bus. It was a 10-minute ride to the grandstand.

When we got there we picked seats on the top row. You could see the Launch Pad perfectly. It was a long time until the shuttle went off so I went in the Saturn Building and watched a movie.

It was about the Apollo 11 mission. Neil Armstrong walked the first few steps on the moon in the Apollo mission. Then I had to go sit down.

The shuttle was about to go off. At 9 minutes the countdown stopped. Then it started again. At 1 minute until it launched, I was so excited. When it got to 10 seconds, we all went 10, 9, 8, 7, 6, 5, 4, 3, 2, 1.

Then it happened. It was so awesome. It was like an earthquake. The ground shook, and the noise sounded like an explosion.

It lasted about two minutes, then it was gone. It was already in space. It can go around the world in 90 minutes.

Then we got back on the bus. When we got back to the Space Center, we went to see a 3–D movie called ''The Space Station.'' The space station is a place where astronauts can go and live.

Then we went home after our last day at the Kennedy Space Center. So ends my wonderful space vacation.●

TRIBUTE TO BRENDA S. GEIST

● Mr. WARNER. Mr. President, I rise today to honor Mrs. Brenda Geist on the occasion of her retirement from the Department of the Navy. Today, we celebrate with Brenda and her family her remarkable 37 years of exemplary and distinguished service to the Navy and the Nation. It is a privilege for me to address the Chamber today in honor of Brenda.

''Far and away the best prize that life offers,'' Teddy Roosevelt remarked, ''is the chance to work hard at work worth doing.'' When Brenda first began with the Navy Department at the Charleston Naval Station, she understood that supporting the men and women of the Sea Service was indeed work worth doing. Brenda has remained true to this principle ever since.

From the small Navy office on the Cooper River to the many postings around the world that followed, Brenda quickly became recognized by all for her acumen and accomplishments. Understandably, Brenda's talents were ultimately sought by the Chief of Naval Operations and the Secretary of the Navy in Washington, D.C. In 1987, Brenda was selected to serve as the director of the Congressional Travel Division for the Navy Secretary's legislative affairs office. Past being prologue, Brenda's record of success continued unabated and has been nothing short of outstanding.

For 15 years, Brenda has been a key advisor to a succession of eight admirals. During her tenure, Brenda planned and coordinated travel around the world for more than 300 congressional delegations. A superb financial manager, Brenda also responsibly managed annual budgets of over $1.5 million—maintaining flawless documents and receiving the highest possible praise at every audit. Every day, her work directly supported the positive, productive interaction of senior Navy leadership and the Congress.

The Pentagon on the Potomac is a long way from the little Navy office on the Cooper River. Brenda's heartfelt commitment to the Navy's officers and sailors, her guiding compass over the years, never wavered.

Sharing this adventure with Brenda is Captain Gary Geist, U.S. Navy Ret., her husband of 24 years, and their children, Jim, Stacey, Darcey, Sam, and Curtis. With the loving support of her immediate Navy family, Brenda time and again, rose to the occasion for her larger extended Navy family.

Mr. President, I invite you and our Senate colleagues to join me and offer our sincere appreciation to Brenda Geist for her years of dedication and outstanding service. We wish her and her loving family ''fair winds and following seas'' as they begin their next adventure together. They will be sorely missed, but most certainly never forgotten.●

HEALTH CARE HERO

● Mr. SMITH. Mr. President, I rise today to salute a Health Care Hero from my home State of Oregon, the N2K Nursing Shortage Demonstration Project.

Several of my colleagues and I have come to this chamber before to discuss the growing shortage of health care workers in this country. This growing crisis has severe implications for quality patient care, retention of qualified nurses, and the future of health care delivery. Last year, Congress began to address this problem by passing the Nurse Reinvestment Act, but there is much more work to be done.

Fortunately, an exciting new program in Oregon is working to find new ways to recruit nurses. The N2K project offers paraprofessional staff from local hospitals and clinics the opportunity to secure a nursing degree while continuing to receive their current salary and benefits. Participants finish prerequisite classwork, participate in clinical training and complete an 18 month nursing degree program. Because they have come from health care institutions, these workers are more likely to continue in the nursing profession and stay in the communities where they were trained, solving some of the pressing issues creating the nursing crisis.

But the most unique and beneficial part of this program is that recruits must be bilingual or be from a minority population. A major challenge facing health care delivery today is the severe lack of bilingual health professionals. In Oregon, and in many other places, we have large immigrant communities, primarily Spanish-speaking, and few nurses who can communicate with them easily. Many N2K participants would not have the opportunity to pursue a professional nursing career were this program not available. As nurses, they will bring a new level of comfort and care to non-English speaking patients.

Although the N2K demonstration project is still in its initial stages, it is already showing great success. Representatives from the U.S. Department of Health and Human Services Office of Minority Health visited Oregon this week to meet with the participating institutions and 11 students completing the program. The visitors were deeply impressed with the project, particularly after speaking with these excellent students who look forward to a rewarding career in nursing.

Today I honor the N2K project as a Health Care Hero. N2K's vision and dedication to building a more diverse health care work force is helping Oregon find the quality workers we need to meet tomorrow's health care challenges. I look forward to the project's continuing success and wish the partnership all the best as it moves forward.●

TRIBUTE TO JOHNSON CENTRAL HIGH SCHOOL ACADEMIC TEAM

● Mr. BUNNING. Mr. President, I rise today in the Senate to pay tribute to the Johnson Central High School Academic Team. Recently, the members of this Academic Team won their fourth straight 15th Regional Governor's Cup.

The Johnson Central Academic Team won the overall District 60 Governor's Cup Championship and went on to claim the Regional title. Along with winning the overall title, the team was awarded top honors in the Written Assessments section and the Future Problem Solving team also won first place. Also, the Quick Recall team defended their title by placing first 2 years in a row. Individual members also placed first in Mathematics, Language Arts and English Composition, and Science and Social Studies.

The citizens of Paintsville, KY are fortunate to have the 15th Regional champ's living and learning in their community. Their example of hard work and determination should be followed by all in the Commonwealth.

I congratulate the members of the Academic Team for their success. But also, I want to congratulate their peers, coaches, teachers, administrators, and parents for their support and sacrifices they've made to help the

Academic Team meet those achievements and dreams.●

50th ANNIVERSARY OF WORLD MEDICAL RELIEF, INC.

● Mr. LEVIN. Mr. President, I would like to congratulate World Medical Relief, Inc. for 50 years of distinguished service to needy individuals in the United States and around the world. On March 8, 2003, staff members, supporters, and beneficiaries of World Medical Relief, Inc. services will gather in my home state of Michigan for the ''Miracles of Mercy Gala 2003.'' This event will commemorate the commitment and dedication that World Medical Relief, Inc. has provided to the sick and needy.

For 50 years, World Medical Relief, Inc. has been a driving force for medical support both in my home state of Michigan and internationally. It is noteworthy that the success and accomplishments of this program today are in part the direct result of the unwavering devotion of founder Irene M. Auberlin. The hard work and perseverance of Mrs. Auberlin is now reflected by the many individuals and groups that continue to provide assistance to those most in need.

Today, the program serves over 1,500 people in the metropolitan Detroit area and 125 nations worldwide. I would like to congratulate William N. Genematas for receiving this year's Irene M. Auberlin Service Above Self Award for his long-time dedication to World Medical Relief, Inc. I also would like to commend both the Ford Motor Company Fund for its continued support of the Senior Prescription Program and the Christian Association of Medical Mission for their international aid efforts in developing nations. World Medical Relief, Inc. and its members deserve both our respect and gratitude.

I am sure that my colleagues in the Senate will join me in offering our congratulations to World Medical Relief, Inc. and its members as they celebrate 50 years of distinguished service.●

THE HEROIC EFFORTS OF BILL CARR AND JEFF KEEZER

● Mr. NELSON of Nebraska. Mr. President, today it is my great honor to recognize the valiant efforts of two volunteer firefighters from Ainsworth, NE.

Mr. Bill Carr and Mr. Jeff Keezer of the Ainsworth Volunteer Firefighter Department were instrumental in the April 22, 2002 rescue attempt of Timothy Culpepper, a digital communications worker who was stranded more than one thousand one hundred feet in the air when a fifteen hundred foot telecommunications tower he was working on partially collapsed near Bassett, NE.

When a wire snapped disabling and stranding Mr. Culpepper, several agencies, including the Nebraska Emergency Management Agency, were called upon for the dangerous rescue mission. However, upon arriving at the scene, response teams realized they were ill-equipped to perform the high-altitude rescue.

Bill Carr, a carpenter and married father of three, had spent many summers during college painting tall communications towers. Jeff Keezer, a married father of one, works for a steel company that erects hundred-foot grain elevators. Though these experiences could not have adequately prepared them for this dangerous and technically challenging rescue. They quickly volunteered to help.

With no regard for their personal safety, Mr. Carr and Mr. Keezer, armed only with estimations of the exact height of the stranded worker, began to make the physically challenging two-hour ascent to rescue the man who was hanging only by a harness. Carrying bundles of rope and heavy rescue equipment, these brave firefighters, along with a handful on colleagues from the Lincoln Fire Department, scaled the tower amid 30-mph winds and with dwindling daylight. Upon reaching Mr. Culpepper it was discovered that tragically he did not survive the impact of tumbling debris.

Mr. Carr and two other firefighters managed to scale the total distance to Mr. Culppeper in ninety minutes while Mr. Keezer, with heavy rescue equipment on his back, and two other firefighters scaled to the half-way point to manage the recovery effort and descent that lasted more than 3 hours.

Unfortunately these two brave and selfless first-responders were omitted from an award ceremony in Washington, D.C. on February 14. Though the Department of Justice didn't recognize their efforts, Mr. Carr and Mr. Keezer can forever hold their heads high knowing their bravery and the fabric of their character has made all Nebraskans, and especially their neighbors in Ainsworth, proud of their actions.

Mr. President, heroism comes in many forms and the courage displayed by Mr. Carr and Mr. Keezer with danger present is a shining example. Nebraskans like Mr. Carr and Mr. Keezer are selfless, honorable and just and they are what makes living in Nebraska living ''the good life.''

I am proud to represent Nebraskans like Mr. Carr and Mr. Keezer who are committed public servants. Volunteer services are an essential part of small-town America. Without the brave and selfless efforts of everyday citizens like Mr. Keezer and Mr. Carr, many rural communities would lack vital protection and security. The city of Ainsworth and the state of Nebraska are fortunate to have courageous citizens like Jeff Keezer and Bill Carr. These men are true heroes.●

NEW REVOLVER TOO BIG FOR ''DIRTY'' HARRY

● Mr. LEVIN. Mr. President, I want to bring to the attention of my colleagues an article from the February 14, 2003, Los Angeles Times entitled ''New Revolver Too Big For 'Dirty' Harry.'' The article discusses a new .50 caliber handgun manufactured by the Smith and Wesson Corporation. The 500 model, the biggest handgun currently in production, is 15 inches long, weighs 4.5 pounds, and uses a .50 caliber Magnum Smith and Wesson bullet that packs a muzzle force of 2,600 foot-pounds. The bullet is half an inch wide and is more powerful than comparable ammunition because it is much longer and contains more gun powder.

According to a Violence Policy Center expert cited in the article, the gun's cartridge has about twice the muzzle energy of most rounds for common semiautomatic assault weapons, such as the AR–15, a civilian version of the military's M–16. In fact, the new gun packs a punch powerful enough to stop a charging bear in its tracks.

A Smith and Wesson representative acknowledges that the company hopes the gun will help Smith and Wesson win back market share lost when the company agreed to a number of steps to improve gun safety and keep guns out of the hands of criminals. Smith and Wesson's decision to produce the .50 caliber handgun represents a step backward in the effort to improve gun safety. Not only has the company apparently scrapped its plan to work with the federal government to take sensible steps to make guns safer and keep guns from getting into the wrong hands, but the company seems to be headed in the opposite direction by creating a handgun that is reported to have double the power of most assault rifles.

Last year, I cosponsored the Military Sniper Weapon Regulation Act, a bill which would change the way .50 caliber sniper rifles are regulated by placing them under the requirements of the National Firearms Act. This bill would subject the sniper rifles to the same regimen of registration and background checks as other weapons of war, such as machine guns.

Unfortunately, the new Smith and Wesson .50 caliber handgun would not be affected by this legislation. However, both the .50 caliber handgun and sniper rifle are simply too powerful to be on the streets. Congress must take a long, hard look at these potentially lethal weapons.

[From the L.A. Times, Feb. 14, 2003]

A POWERFUL NEW REVOLVER IS DRAWING FIRE ALREADY

(By Ralph Frammolino and Steve Berry)

Even the most ardent firearm lovers acknowledge that Smith & Wesson's new .50-caliber Magnum revolver is more gun than anyone needs.

It has double the power of most assault rifles in America. Its kick can send a grown man reeling; a single bullet can drop a grizzly.; It is so heavy and long that police say no-criminal would dare try to hide it in his waistband. It will cost as much $989.

And gun buyers across the country can't wait to get their hands on it.

''The initial reaction has been even stronger than we had anticipated, so we're ramping

up production to meet the demand,'' Bob Scott, Smith & Wesson Corp.'s chairman, said from the 2003 Shooting, Hunting, Outdoor Trade Show in Orlando, Fla.

''Certainly, in our booth it's the product that has created the most buzz.''

The Springfield, Mass-based company, creator of the .44 Magnum of ''Dirty Harry'' fame, unveiled its new offering Thursday as the world most powerful commercially produced revolver. Executives for the country's second-largest firearms manufacturer said they hoped the gun would help regain lost market share by generating excitement among an important, albeit niche, market of big-game hunters, collectors and recreational target shooters.

But even before the weapon's wide distribution, scheduled for next month, forces on both sides of the firearms debate are taking aim at its social effects.

Gun control groups condemned the Model 500 as an example of the industry's ''deadlier-is-better'' mentality, predicting that the new model would soon find its way to the streets.

''A hunting weapon? that's a joke,'' said Luis Tolley, director of state legislation for the Brady Campaign to Prevent Gun Violence. ''What we have here is a weapon that's designed to appeal to people who just want to make a bigger hole in whatever they're shooting at. And, hopefully, they're not living next door to me.''

Said Josh Sugarmann, executive director of the Violence Policy Center: ''This gun is not being made for hunters in Africa. It's being made for bored white gun owners in America. Why are they putting so much firepower into people's hands?''

The real question, say some gun experts, is: Why are people demanding it?

Adam Firestone, editor of Cruffler.com, a Web site for gun collectors, said he viewed demand for Smith & Wesson's new product as more of an outgrowth of America's obsession with size and status, rather than an indicator of growing paranoia over crime or homeland security.

''How many people do you know have Lincoln Navigators or Hummer H2s?'' he said. ''We are phenomenal at buying beyond our needs. And with regard to the firearm industry, if it is bigger, if it is more expensive . . . we will line up around the corner to buy the darned thing, regardless of the fact that there may be six other guns that cost half as much and do the job just as well.''

Smith & Wesson executives hope that the new offering, one of nine new models introduced at the Florida gun show Thursday, will put it back in the good graces of a gun-buying constituency that remains sore over the company's decision in 2000 to sign agreements with the federal government that promised to put locks on all firearms it sold.

That backlash served as a double whammy, taking away sales from Smith & Wesson even as the entire industry was in decline.

''We're in the process of winning back market share or business that was lost as a result of negative reaction by consumers to the decisions by the previous ownership,'' said Scott, the company chairman.

Smith & Wesson has built its reputation by building bigger guns. The .357 Magnum, introduced in 1935, was considered a breakthrough because of its muzzle energy that delivered impact at 535 foot-pounds, said Roy G. Jinks, the company's historian.

The weapon, developed at the behest of hunters, gained favor with police during the mobster era because it could shoot through a car's engine block, he said.

In 1956, Smith & Wesson introduced the even more powerful .44 Magnum, the gun made famous years later by Clint Eastwood in his crime-fighting movies as ''Dirty'' Harry Callahan, a San Francisco cop.

With Thursday's unveiling the company now leapfrogs ahead of its competitors, which had surpassed the .44 Magnum with more potent weapons.

The Model 500 uses a bigger frame, takes a new .50 caliber Magnum Smith & Wesson bullet and packs a muzzle force of 2,600 foot-pounds.

Though there are single-shot, custom pistols that use larger ammunition, the new gun is the largest production revolver or semiautomatic pistol.

At .50-caliber, the bullet is about half an inch wide but is more powerful than other such ammunition because it is longer and can pack more powder, said Garen Wintemute, a gun expert and director of the Violence Prevention Research Program at UC Davis.

He said the gun's cartridge has about twice the muzzle energy of most rounds for common semiautomatic assault weapons used in America, such as the AR–15, a civilian version of the military's M–16.

Wintemute predicted that it would be a smash with gun enthusiasts who can order one with a barrel as long as 10 inches.

One such enthusiast is Marc Halcon, owner of American Shooting Center in San Diego.

He said the allure of the weapon ''has something to do with the artistry of creating a mechanism that will do something that no other will do. It's another step in science and engineering.''

On a personal level, Halcon said. ''I already own the most powerful handgun on the market, and if they build a more powerful one, then I want to buy it.''

Sam Paredes, executive director of the Gun Owners of California feels much the same.

''I can't wait to shoot one of these things,'' he said.

Paredes acknowledged that the Model 500 could be portrayed as the ''boogeyman of all guns.''

He said its recoil would pack such a wallop that it would be virtually impossible for criminals to rely on it—a sentiment shared by Lt. Bruce Harris, the firing range master for the Los Angeles County Sheriff's Department.

''It's a little tough to have one of those under your shirt,'' Harris said, adding that he didn't believe it would become the weapon of the street because ''gangbangers don't have $900 to spend on a Smith & Wesson revolver.''

Proposed legislation regulating the sale of .50 caliber rifles is scheduled for consideration in the state Assembly and the Los Angeles City Council, said Tolley of the Brady Campaign. But government officials said Thursday that they had no plans to include the new revolver in the restrictions.

Still, Tolley said, his group will work to bring the Model 500 under some kind of control because, despite Smith & Wesson's intentions, the weapon is bound to end up in the wrong hands.

''They're marketing this weapon to people who get off on the idea that they have the biggest, baddest gun on the block,'' Tolley said.

''Unfortunately a number of them are going to juvenile gang members and people who have an unhealthy fascination with fire arms.''●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

NOTICE STATING THAT THE EMERGENCY DECLARED WITH RESPECT TO THE GOVERNMENT OF CUBA ON FEBRUARY 24, 1996, IS TO CONTINUE IN EFFECT BEYOND MARCH 1, 2003—PM 18

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice, stating that the emergency declared with respect to the Government of Cuba's destruction of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba on February 24, 1996, is to continue in effect beyond March 1, 2003, to the *Federal Register* for publication.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 27, 2003.*

MESSAGES FROM THE HOUSE

At 12:39 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 254. An act to authorize the President of the United States to agree to certain amendments to the Agreement between the Government of the United States of America and the Government of the United Mexican States concerning the establishment of a Border Environment Cooperation Commission and a North American Development Bank, and for other purposes.

H.R. 258. An act to ensure continuity of the design of the 5-cent coin, establish the Citizens Coinage Advisory Committee, and for other purposes.

H.R. 657. An act to amend the Securities Exchange Act of 1934 to augment the emergency authority of the Securities and Exchange Commission.

H.R. 672. An act to rename the Guam South Elementary/Middle School of the Department of Defense Domestic Dependents Elementary and Secondary Schools System in honor of Navy Commander William ''Willie'' McCool, who was the pilot of the Space Shuttle Colombia when it was tragically lost on February 1, 2003.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 36. Concurrent resolution encouraging the people of the United States to honor and celebrate the 140th anniversary of the Emancipation Proclamation and commending Abraham Lincoln's efforts to end slavery.

At 5:53 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 534. An act to amend title 18, United States Code, to prohibit human cloning.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 254. An act to authorize the President of the United States to agree to certain amendments to the Agreement between the Government of the United States of America and the Government of the United Mexican States concerning the establishment of a Border Environment Cooperation Commission and a North American Development Bank, and for other purposes; to the Committee on Foreign Relations.

H.R. 258. An act to ensure continuity for the design of the 5-cent coin, establish the Citizens Coinage Advisory Committee, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 657. An act to amend the Securities Exchange Act of 1934 to augment the emergency authority of the Securities and Exchange Commission; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 672. An act to rename the Guam South Elementary Middle School of the Department of Defense Domestic Dependents Elementary and Secondary Schools System in honor of Navy Commander William ''Willie'' McCool, who was the pilot of the Space Shuttle Columbia when it was tragically lost on February 1, 2003; to the Committee on Armed Services.

The following concurrent resolution was read, and referred as indicated

H. Con. Res. 36. Concurrent resolution encouraging the people of the United States to honor and celebrate the 140th anniversary of the Emancipation Proclamation and commending Abraham Lincoln's efforts to end slavery; to the Committee on the Judiciary.

MEASURE HELD AT THE DESK

The following concurrent resolution was ordered held at the desk by unanimous consent:

S. Con. Res. 12. Concurrent resolution honoring the life and work of Mr. Fred McFeely Rogers.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 534. An act to amend title 18, United States Code, to prohibit human cloning.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1265. A communication from the Deputy Secretary, Division of Market Regulations, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Definition of Terms in the Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 (RIN3235-AI19)'' received on February 24, 2003; to the Committee on Banking , Housing, and Urban Affairs.

EC–1266. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a nomination confirmed for the position of Assistant Secretary of Financial Institutions, received on February 14, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1267. A communication from the Deputy Secretary, Division of Market Regulations, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Regulations Analyst Certification (See Release 33–8193; 34–47384(February 20, 2003)) (RIN3235–AI60)'' received on February 24, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1268. A communication from the Deputy Secretary, Division of Market Regulations, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Custody of Investment Company assets with a Securities Depository (3235–AG71)'' received on February 14, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1269. A communication from the Assistant General Counsel for Regulations, Office of the Assistant Secretary for Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Authority To Waive the Market-to-Market Regulations (RIN2502–AH94)'' received on February 24, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1270. A communication from the Assistant General Counsel for Regulations, Office of the Assistant Secretary for Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Office of Inspector General Subpoenas and Production in Response to Subpoenas or Demands of Courts of Other Authorities (RIN2508–AA13)'' received on February 24, 2003; to the Committee on Banking , Housing, and Urban Affairs.

EC–1271. A communication from the Chairman and President, Import-Export Bank, transmitting, pursuant to law, the report relative to transactions involving U.S. exports to Italy; to the Committee on Banking, Housing, and Urban Affairs.

EC–1272. A communication from the Secretary of Commerce, transmitting, pursuant to law, the Annual Report for Fiscal Year 2002 of the Department of Commerce's Bureau of Industry and Security (BIS); to the Committee on Banking, Housing, and Urban Affairs.

EC–1273. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Ashley River; Charleston, SC (CGD07–03–018)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1274. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; (Including 3 Regulations) [COTP San Diego 03–007] [COTP San Diego 03–008] [COTP San Diego 03–009] (RIN2115–AA97]'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1275. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Gulf Intercostal Waterway, Grand Lake, LA (CGD08–03–003)'' received on February 24, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1276. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; (Including 2 regulations) [CGD01–03–010] [COTP Miami 03–001] 92115–AA97]'' received on February 24, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1277. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Fire Suppression Systems and Voltage Planning for Towing Vessels (USCG 2000–6931)(CGD 97–064) (2115–AF53)'' received on February 24, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1278. A communication from the Secretary of the Commission, Bureau of Competition, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled ''16 CFR Parts 801 and 803 (3084–AA23)'' received on February 14, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1279. A communication from the Secretary of the Commission, Bureau of Competition, Federal Trade Commission, transmitting, pursuant to law, the report of a rule entitled ''10 CFR Part 305—Rule Concerning Disclosures Re Energy Consumption and Water Use of Certain Home Appliances And Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')—Clothes Washer Reporting Date (RIN3084–AA74)'' received on February 24, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1280. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska—Closure for Pollock in Statistical Area 630, Gulf of Alaska'' received on February 14, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1281. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Closure; Gulf of Alaska directed fishing for Pacific cod (0679)'' received on February 14, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1282. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska—Closure for CDQ Reserve Amounts of Shortraker/Rougheye Rockfish and Northern Rockfish in the BS Subarea, BSAI'' received on February 14, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1283. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska—Closes Directed Fishing for Rock Sole by Catcher Processors Listed Under the American Fisheries Act in the BSAI Management Area'' received on February 14, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1284. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Increase the Trip Limit for Gulf Group King Mackerel in the Florida East Coast Subzone'' received on February 24, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1285. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska—Closes Pacific Cod Fishery by the Inshore Component in the Central Regulatory Area, Gulf of Alaska'' received on February 24, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1286. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Opening fishing for pollock in Statistical Area 630 in the Gulf of Alaska (0679)'' received on February 24 , 2003; to the Committee on Commerce, Science, and Transportation.

EC–1287. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Closure of the commercial run-around gillnet fishery for king mackerel in the exclusive economic zone in the southern Florida west coast subzone'' received on February 24, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1288. A communication from the Deputy Assistant Administrator, Regulatory Programs, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska—Interim 2003 Harvest Specification for Gulf of Alaska Groundfish Fisheries'' received on February 14, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1289. A communication from the Deputy Assistant Administrator, Regulatory Programs, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries Off West Coast States and in Western Pacific, Coastal Pelagic Species Fishery: Amendment 10 (0648–AP87)'' received on February 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1290. A communication from the Deputy Assistant Administrator, Regulatory Programs, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Magnuson-Stevens Act Provisions; Fisheries Off West Coast States and in the Western Pacific; Pelagic Fisheries; Pacific Remote Island Areas; Permit and Reporting Requirements for the Pelagic Troll and Handline Fishery (RIN0648–AL41)'' received on February 20, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1291. A communication from the Deputy Assistant Administrator, Regulatory Programs, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations (0648–AQ13)'' received on February 14, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1292. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Air worthiness Directives; Air Cruisers Company Emergency Evacuation Slide/Rafts Docket No. 99–NE–31 (2120–AA64) (2003–0114)'' received on February 14, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1293. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Class E Airspace Ulysses, KS Docket No. 02–ACE–11 (2120–AA66)'' received on February 14, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1294. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (4) Amendment No. 3040 Docket No. 30349 (2120–AA65)'' received on February 14, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1295. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class D Airspace; White Plains, NY Docket No. 02–AEA–20 (2120–AA66)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1296. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Lockhaven, PA Docket No. 02–AEA–21 (2120–AA66)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1297. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class D Airspace, Shaw AFB, SC Docket No. 02–ASO–27 (2120–AA66) (2003–0044)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1298. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 737–600, 700, 700C, 800 and 900 Series Airplanes Docket No. 2002–NM–307 (2120–AA64) (2003–0125)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1299. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directive: Turbomeca S.A. Arriel 1 A2, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K, 1K1, 1S, 1S1, and Arriel 2B, 2B1, 2C, 2C1, 2S1 Series Turboshaft Engines'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1300. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Various Boeing and McDonnell Douglas Transport Category Airplanes Docket No. 2002–NM–43 (2120–AA64) (2003–0123)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1301. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 Series Airplanes Docket No. 2001–NM–277 (2120–AA64) (2003–0122)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1302. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 737–300, 400 and 500 Series Airplanes Docket No. 2001–NM–274 (2120–AA64) (2003–0121)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1303. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: BAE Systems Operations Limited Model BAE and Arvo 146–RJ Series Airplanes Docket No. 2002–NM–48 (2120–AA64) (2003–0120)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1304. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A300, B2, and B4; A300, B4–600, B4–600R and F4–600R [Collectively Called A300–600) A310, A319, A320, A321, A330 and A340, Series Airplanes Docket No. 96–NM–179 (2120–AA64) (2003–0119)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1305. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767 Series Airplanes Docket No. 2002–NM–308 (2120–AA64) (2003–0118)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1306. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A330 and A340 Series Airplane Docket No. 2001–NM–340 (2120–AA64) (2003–0117)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1307. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empresa Brasileria da Aeronautica S.A (EMBRAER) Model EMB–145 Series Airplanes Docket No. 99–Nm–83 (2120–AA64) (2003–0116)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1308. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas Model MD 90–30 Airplanes Docket No. 2001–NM–172 (2120–AA64)

(2003–0115)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1309. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Change of Controlling Agency for Restricted Area R–6601 Fort A P Hill, VA; and R–6608A, R–6608B, and R–6608C, Quantico, VA; Docket No. 02–AEA–23 (2120–AA66) (2003–0042)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1310. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revocation of Class E Airspace; Brookfield, MO; Docket no. 03–ACE–3 (2120–AA66) (2003–0041)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1311. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E2 Airspace and Modification of Existing Class E5 Airspace; Ainsworth, NE; correction; Docket No. 02–ACE–8 (2120–AA66) (2003–0040)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1312. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: MD Helicopters, Inc . Model 369D, 369E, 369F, and 369FF Helicopters; Docket no. 2001–SE–40 (2120–AA64) (2003–0111)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1313. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Ratheon Aircraft Company 65, 90, 100, 200, and 300 Series , and Model 2000 Airplanes; Docket No. 2000–CE–80 (2120–AA64) (2003–0110)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1314. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: CFM International CFM 56–6, and 5B Series Turbofan Engines; Docket No. 2001–NE–49 (2120–AA64) (2003–0109)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1315. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives Bell Helicopter Textron Canada Limited Model 407 Helicopters; docket no. 2002-sw-33'' received on February 11 , 2003; to the Committee on Commerce, Science, and Transportation.

EC–1316. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing 7777 Series Airplanes Equipped with Rolls Royce Model Trent 800 Series Engines, Docket no. 2002-Nm-318 (2120–AA64) (2003–0107'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1317. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Aging aircraft Safety; Interim final Rule; Extension of Comment period; Docket No. FAA–1999–540 (2120–AE42) (2003–0002)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1318. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (14); Amdt. No 3042 (2120–AA65) (2003–0009)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1319. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (43) Amdt. No. 3041 (2120–AA65) (2003–0008)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1320. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Using Agency for Restricted Area 2301E, Ajo East, AZ; Restricted Area 2304, Gila Bend, AZ: and Restricted Area 2305, Gila Bend, AZ; Docket No. 02–Awp-11 (2120–AA66) (203–0043)'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1321. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eurocopter France Model AS350B, BA, B1, B2, B3, C, D D1, AS355E, F F1, F2, and N Helicopters; Docket No. 2002–SW–41'' received on February 11, 2003; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. GRASSLEY, from the Committee on Finance, without amendment:

S. 476. An original bill to provide incentives for charitable contributions by individuals and businesses, to improve the public disclosure of activities of exempt organizations, and to enhance the ability of low-income Americans to gain financial security by building assets, and for other purposes (Rept. No. 108–11).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HATCH for the Committee on the Judiciary.

Deborah L. Cook, of Ohio, to be United States Circuit Judge for the Sixth Circuit.

John G. Roberts, Jr., of Maryland, to be United States Circuit Judge for the District of Columbia Circuit.

Jay S. Bybee, of Nevada, to be United States Circuit Judge for the Ninth Circuit.

Ralph R. Erickson, of North Dakota, to be United States District Judge for the District of North Dakota.

William D. Quarles, Jr., of Maryland, to be United States District Judge for the District of Maryland.

Gregory L. Frost, of Ohio, to be United States District Judge for the Southern District of Ohio.

Jeremy H. G. Ibrahim, of Pennsylvania, to be a Member of the Foreign Claims Settlement Commission of the United States for the term expiring September 30, 2005.

Edward F. Reilly, of Kansas, to be a Commissioner of the United States Parole Commission for a term of six years.

Cranston J. Mitchell, of Missouri, to be a Commissioner of the United States Parole Commission for a term of six years.

Marian Blank Horn, of Maryland, to be a Judge of the United States Court of Federal Claims for a term of fifteen years.

Timothy C. Stanceu, of Virginia, to be a Judge of the United States Court of International Trade.

Peter Joseph Elliott, of Ohio, to be United States Marshal for the Northern District of Ohio for the term of four years.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. NICKLES (for himself and Mr. MILLER) (by request):

S. 2. A bill to amend the Internal Revenue Code of 1986 to provide additional tax incentives to encourage economic growth; to the Committee on Finance.

By Mr. REID (for himself, Mr. SMITH, Ms. SNOWE, Ms. CANTWELL, Mr. HARKIN, Mr. LIEBERMAN, Mrs. FEINSTEIN, Mr. JEFFORDS, Mr. WYDEN, and Mr. COLEMAN):

S. 464. A bill to amend the Internal Revenue Code of 1986 to modify and expand the credit for electricity produced from renewable resources and waste products, and for other purposes; to the Committee on Finance.

By Mrs. MURRAY (for herself, Ms. CANTWELL, Mr. REED, Ms. COLLINS, Ms. LANDRIEU, Ms. MIKULSKI, and Mr. SMITH):

S. 465. A bill to amend title XVIII of the Social Security Act to expand medicare coverage of certain self-injected biologicals; to the Committee on Finance.

By Mr. DASCHLE (for himself and Mr. LEAHY):

S. 466. A bill to provide financial assistance to State and local governments to assist them in preventing and responding to acts of terrorism in order to better protect homeland security; to the Committee on the Judiciary.

By Mrs. HUTCHISON (for herself, Ms. CANTWELL, Mr. FRIST, Mr. CORNYN, Mr. COCHRAN, Mr. THOMAS, and Mr. ALEXANDER):

S. 467. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for State and local sales taxes in lieu of State and local income taxes and to allow the State and local income tax deduction against the alternative minimum tax; to the Committee on Finance.

By Ms. STABENOW (for herself, Mr. DOMENICI, Mr. LEVIN, Mr. BINGAMAN, Mr. BREAUX, Mrs. CLINTON, Mr. JOHNSON, and Ms. LANDRIEU):

S. 468. A bill to amend the Agriculture and Consumer Protection Act of 1973 to assist the neediest of senior citizens by modifying the eligibility criteria for supplemental foods provided under the commodity supplemental food program to take into account the extraordinarily high out-of-pocket medical expenses that senior citizens pay; to the

Committee on Agriculture, Nutrition, and Forestry.

By Mr. KOHL (for himself, Mr. DEWINE, Mrs. FEINSTEIN, Mr. SCHUMER, Mr. REED, Ms. MIKULSKI, Mr. CORZINE, and Mr. LEVIN):

S. 469. A bill to amend chapter 44 of title 18, United States Code, to require ballistics testing of all firearms manufactured and all firearms in custody of Federal agencies; to the Committee on the Judiciary.

By Mr. SARBANES (for himself, Mr. WARNER, Ms. MIKULSKI, Mr. LUGAR, and Mr. DURBIN):

S. 470. A bill to extend the authority for the construction of a memorial to Martin Luther King, Jr; to the Committee on Energy and Natural Resources.

By Mr. ALLEN:

S. 471. A bill to ensure continuity for the design of the 5-cent coin, establish the Citizens Coinage Committee, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. ALLEN (for himself and Mr. WARNER):

S. 472. A bill to direct the Secretary of the Interior to conduct a study of the suitability and feasibility of establishing the Northern Neck National Heritage Area in Virginia, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. FEINGOLD (for himself, Mrs. BOXER, Mr. JEFFORDS, and Mr. LIEBERMAN):

S. 473. A bill to amend the Federal Water Pollution Control Act to clarify the jurisdiction of the United States over waters of the United States; to the Committee on Environment and Public Works.

By Mr. JOHNSON:

S. 474. A bill to ensure continuity for the design of the 5-cent coin, establish the Citizens Coinage Advisory Committee, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. THOMAS:

S. 475. A bill to reform the nation's outdated laws relating to the electric industry, improve the operation of our transmission system, enhance reliability of our electric grid, increase consumer benefits from whole electric competition and restore investor confidence in the electric industry; to the Committee on Energy and Natural Resources.

By Mr. GRASSLEY:

S. 476. An original bill to provide incentives for charitable contributions by individuals and businesses, to improve the public disclosure of activities of exempt organizations, and to enhance the ability of low-income Americans to gain financial security by building assets, and for other purposes; from the Committee on Finance; placed on the calendar.

By Mr. FEINGOLD (for himself, Mr. LEAHY, and Mr. DAYTON):

S. 477. A bill to amend the Internal Revenue Code of 1986 to disallow deductions and credits for companies who discriminate against Canadian pharmacies that pass along discounts to consumers living in the United States; to the Committee on Finance.

By Mr. SARBANES (for himself, Mr. WARNER, Mrs. MURRAY, Mr. CAMPBELL, Mrs. HUTCHISON, Mrs. CLINTON, Mr. SESSIONS, and Mr. MILLER):

S. 478. A bill to grant a Federal charter Korean War Veterans Association, Incorporated, and for other purposes; to the Committee on the Judiciary.

By Mr. EDWARDS:

S. 479. A bill to amend title IV of the Higher Education Act of 1965 to provide grants for homeland security scholarships; to the Committee on Health, Education, Labor, and Pensions.

By Mr. HARKIN (for himself, Mr. GRASSLEY, Mr. KENNEDY, Mr. COCHRAN, Mrs. LINCOLN, Mr. KERRY, Mr. BINGAMAN, Mr. DODD, Mr. BAUCUS, and Mr. EDWARDS):

S. 480. A bill to provide competitive grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. ALLEN (for himself and Mr. WARNER):

S. 481. A bill to amend chapter 84 of title 5, United States Code, to provide that certain Federal annuity computations are adjusted by 1 percentage point relating to periods of receiving disability payments, and for other purposes; to the Committee on Governmental Affairs.

By Ms. COLLINS:

S. 482. A bill to reauthorize and amend the Magnuson-Stevens Fishery Conservation and Management Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Ms. COLLINS (for herself and Ms. SNOWE):

S. 483. A bill to authorize the Secretary of the Army to carry out a project for the mitigation of shore damages attributable to the project for navigation, Saco River, Maine; to the Committee on Environment and Public Works.

By Mr. LEAHY (for himself and Ms. SNOWE):

S. 484. A bill to amend the Clean Air Act to establish requirements concerning the operation of fossil fuel-fired electric utility steam generating units, commercial and industrial boiler units, solid waste incineration units, medical waste incinerators, hazardous waste combustors, chlor-alkali plants, and Portland cement plants to reduce emissions of mercury to the environment, and for other purposes; to the Committee on Environment and Public Works.

By Mr. INHOFE (for himself and Mr. VOINOVICH) (by request):

S. 485. A bill to amend the Clean Air Act to reduce air pollution through expansion of cap and trade programs, to provide an alternative regulatory classification for units subject to the cap and trade program, and for other purposes; to the Committee on Environment and Public Works.

By Mr. DOMENICI (for himself, Mr. KENNEDY, Mr. COLEMAN, Mr. DAYTON, Mr. GRASSLEY, Mr. REED, Mr. COCHRAN, Mr. DODD, Mr. WARNER, Mr. REID, Mr. THOMAS, Mr. JOHNSON, Mr. SPECTER, Mr. HARKIN, Mr. LUGAR, Mr. DASCHLE, Mr. GRAHAM of South Carolina, Mrs. MURRAY, Ms. COLLINS, Ms. CANTWELL, Mr. ROBERTS, Mr. EDWARDS, Mr. CHAFEE, Mrs. LINCOLN, Mr. BENNETT, and Mr. LAUTENBERG):

S. 486. A bill to provide for equal coverage of mental health benefits with respect to health insurance coverage unless comparable limitations are imposed on medical and surgical benefits; to the Committee on Health, Education, Labor, and Pensions.

By Ms. COLLINS (for herself and Mr. KERRY):

S. 487. A bill to amend the Internal Revenue Code of 1986 to provide a business credit against income for the purchase of fishing safety equipment; to the Committee on Finance.

By Mr. DORGAN (for himself, Mr. BREAUX, Mr. DURBIN, Mr. LEAHY, Mr. HARKIN, and Mr. JOHNSON):

S. 488. A bill to amend the Internal Revenue Code of 1986 to provide a 5-year extension of the credit for electricity produced from wind; to the Committee on Finance.

By Mr. DEWINE (for himself, Mr. GRAHAM of Florida, Mr. LUGAR, Mr. DURBIN, Mr. CHAFEE, and Mr. NELSON of Florida):

S. 489. A bill to expand certain preferential trade treatment for Haiti; to the Committee on Finance.

By Mr. REID (for himself and Mr. ENSIGN):

S. 490. A bill to direct the Secretary of Agriculture to convey certain land in the Lake Tahoe Basin Management Unit, Nevada, to the Secretary of the Interior, in trust for the Washoe Indian Tribe of Nevada and California; to the Committee on Energy and Natural Resources.

By Mr. REID (for himself, Mr. COCHRAN, Mr. DODD, Mr. INOUYE, Ms. LANDRIEU, Mr. LOTT, and Mr. MILLER):

S. 491. A bill to expand research regarding inflammatory bowel disease, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CRAIG:

S. 492. A bill to direct the Secretary of Commerce to impose countervailing duties on dynamic random access memory (DRAM) semiconductors produced by Hynix Semiconductor; to the Committee on Finance.

By Mrs. LINCOLN (for herself, Mr. SPECTER, Mr. ENSIGN, and Ms. LANDRIEU):

S. 493. A bill to amend title XVIII of the Social Security Act to authorize physical therapists to evaluate and treat medicare beneficiaries without a requirement for a physician referral, and for other purposes; to the Committee on Finance.

By Mr. CRAPO:

S. 494. A bill to amend the Internal Revenue Code of 1986 to include agricultural and animal waste sources as a renewable energy resource; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. VOINOVICH (for himself and Mr. DEWINE):

S. Res. 68. A resolution recognizing the bicentennial of Ohio's founding; considered and agreed to.

By Ms. COLLINS (for herself, Mr. REED, and Mr. KENNEDY):

S. Res. 69. A resolution designating March 3, 2003, as ''Read Across America Day''; considered and agreed to.

By Mr. GREGG (for himself, Mr. KENNEDY, Ms. SNOWE, and Mr. DASCHLE):

S. Con. Res. 10. A concurrent resolution designating April 2003 as ''Human Genome Month'' and April 25 as ''DNA Day''; considered and agreed to.

By Mr. CRAPO (for himself and Mr. ALLEN):

S. Con. Res. 11. A concurrent resolution expressing the sense of Congress regarding the Republic of Korea's continuing unlawful bailouts of Hynix Semiconductor Inc., and calling on the Republic of Korea, the Secretary of Commerce, the United States Trade Representative, and the President to take actions to end the bailouts; to the Committee on Finance.

By Mr. SANTORUM (for himself and Mr. SPECTER):

S. Con. Res. 12. A concurrent resolution honoring the life and work of Mr. Fred McFeely Rogers; ordered held at the desk.

ADDITIONAL COSPONSORS

S. 13

At the request of Mr. KYL, the names of the Senator from Alabama (Mr. SHELBY) and the Senator from New Hampshire (Mr. SUNUNU) were added as cosponsors of S. 13, a bill to provide financial security to family farm and small business owners while by ending the unfair practice of taxing someone at death.

S. 56

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 56, a bill to restore health care coverage to retired members of the uniformed services.

S. 150

At the request of Mr. BUNNING, his name was added as a cosponsor of S. 150, a bill to make permanent the moratorium on taxes on Internet access and multiple and discriminatory taxes on electronic commerce imposed by the Internet Tax Freedom Act.

S. 251

At the request of Mr. LOTT, the name of the Senator from Wyoming (Mr. THOMAS) was added as a cosponsor of S. 251, a bill to amend the Internal Revenue Code of 1986 to repeal the 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in the general fund of the Treasury.

S. 252

At the request of Mr. THOMAS, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 252, a bill to amend the Internal Revenue Code of 1986 to provide special rules relating to the replacement of livestock sold on account of weather-related conditions.

S. 253

At the request of Mr. CAMPBELL, the names of the Senator from Mississippi (Mr. COCHRAN) and the Senator from New Hampshire (Mr. SUNUNU) were added as cosponsors of S. 253, a bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

S. 267

At the request of Mr. MCCAIN, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 267, a bill to amend the Internal Revenue Code of 1986 to provide for a deferral of tax on gain from the sale of telecommunications businesses in specific circumstances or a tax credit and other incentives to promote diversity of ownership in telecommunications businesses.

S. 271

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 271, a bill to amend the Internal Revenue Code of 1986 to allow an additional advance refunding of bonds originally issued to finance governmental facilities used for essential governmental functions.

S. 287

At the request of Mr. LEAHY, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 287, a bill to amend the Internal Revenue Code of 1986 to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

S. 300

At the request of Mr. MCCAIN, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 300, a bill to award a congressional gold medal to Jackie Robinson (posthumously), in recognition of his many contributions to the Nation, and to express the sense of Congress that there should be a national day in recognition of Jackie Robinson.

S. 300

At the request of Mr. KERRY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 300, supra.

S. 330

At the request of Mr. CAMPBELL, the names of the Senator from South Carolina (Mr. GRAHAM), the Senator from Montana (Mr. BURNS) and the Senator from Virginia (Mr. ALLEN) were added as cosponsors of S. 330, a bill to further the protection and recognition of veterans' memorials, and for other purposes.

S. 338

At the request of Mr. LAUTENBERG, the names of the Senator from New Jersey (Mr. CORZINE) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. 338, a bill to protect the flying public's safety and security by requiring that the air traffic control system remain a Government function.

S. 344

At the request of Mr. AKAKA, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 344, a bill expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes.

S. 361

At the request of Mrs. LINCOLN, the names of the Senator from Mississippi (Mr. COCHRAN) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. 361, a bill to amend the Internal Revenue Code of 1986 to allow for an energy efficient appliance credit.

S. 392

At the request of Mr. REID, the names of the Senator from Maine (Ms. COLLINS) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. 392, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive both military retired pay by reason of their years of military service and disability compensation from the Department of Veterans Affairs for their disability.

S. 392

At the request of Mr. BUNNING, his name was added as a cosponsor of S. 392, supra.

S. 412

At the request of Mr. KYL, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 412, a bill to amend the Balanced Budget Act of 1997 to extend and modify the reimbursement of State and local funds expended for emergency health services furnished to undocumented aliens.

S. 457

At the request of Mr. LEAHY, the names of the Senator from Montana (Mr. BURNS), the Senator from North Dakota (Mr. CONRAD), the Senator from North Dakota (Mr. DORGAN), the Senator from Louisiana (Ms. LANDRIEU), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Indiana (Mr. LUGAR), the Senator from Rhode Island (Mr. REED) and the Senator from Michigan (Ms. STABENOW) were added as cosponsors of S. 457, a bill to remove the limitation on the use of funds to require a farm to feed livestock with organically produced feed to be certified as an organic farm.

S. CON. RES. 5

At the request of Mr. GRASSLEY, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. Con. Res. 5, a concurrent resolution expressing the support for the celebration in 2004 of the 150th anniversary of the Grand Excursion of 1854.

S. CON. RES. 7

At the request of Mr. BUNNING, his name was added as a cosponsor of S. Con. Res. 7, a concurrent resolution expressing the sense of Congress that the sharp escalation of anti-Semitic violence within many participating States of the Organization for Security and Cooperation in Europe (OSCE) is of profound concern and efforts should be undertaken to prevent future occurrences.

S. CON. RES. 8

At the request of Ms. COLLINS, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. Con. Res. 8, a concurrent resolution designating the second week in May each year as ''National Visiting Nurse Association Week''.

S. RES. 24

At the request of Mr. BYRD, the names of the Senator from Nevada (Mr. REID) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. Res. 24, a resolution designating the week beginning May 4, 2003, as ''National Correctional Officers and Employees Week''.

S. RES. 46

At the request of Mr. BINGAMAN, the names of the Senator from Virginia (Mr. ALLEN), the Senator from New

Mexico (Mr. DOMENICI), the Senator from Wisconsin (Mr. KOHL), the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Oregon (Mr. SMITH) were added as cosponsors of S. Res. 46, a resolution designating March 31, 2003, as ''National Civilian Conservation Corps Day''.

S. RES. 48

At the request of Mr. AKAKA, the name of the Senator from Wyoming (Mr. THOMAS) was added as a cosponsor of S. Res. 48, a resolution designating April 2003 as ''Financial Literacy for Youth Month''.

S. RES. 67

At the request of Mr. SCHUMER, the names of the Senator from Indiana (Mr. BAYH), the Senator from California (Mrs. FEINSTEIN), the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of S. Res. 67, a resolution expressing the sense of the Senate that Alan Greenspan, the Chairman of the Federal Reserve Board, should be recognized for his outstanding leadership of the Federal Reserve, his exemplary conduct as Federal Reserve chairman, and his commitment as a public servant.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NICKLES (for himself and Mr. MILLER) (by request):

S. 2. A bill to amend the Internal Revenue Code of 1986 to provide additional tax incentives to encourage economic growth; to the Committee on Finance.

Mr. NICKLES. Mr. President, today I am sending to the desk a bill by myself and Senator MILLER to amend the IRS Code. It is a bill to provide jobs and economic growth for our country.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

Mr. NICKLES. Mr. President, this bill Senator MILLER and I are introducing is the President's economic and growth package. This is a package the President has put together that would help American families. This is a package that is profamilial and progrowth. It is a bill that will create jobs. It is a bill that will create an incentive to invest. It is a bill to eliminate unfair punitive taxes on corporate earnings that are distributed to the owners of the corporation. It is a bill that will help stimulate and grow our economy.

I compliment the President for his work in proposing this. I am happy to introduce it. Let me talk about a couple of the provisions of the bill.

This bill will expand the 10-percent bracket. This is to help people of all incomes. But the lowest income people will be the true beneficiaries of this package. It will accelerate reductions in the individual income tax rates that were passed in 2001. You might remember the 2001 tax bill that we passed which had individual rate reductions phased in over the years. There was a 1 percent reduction in most of the rates in 2004, and another percent reduction in 2006. These are accelerated to 2003.

It means that the maximum personal income tax bracket would be 35 percent instead of the present 38.6 percent. It means that individuals would not have to pay taxes at rates greater than corporations. The bulk of the benefit of this will come to individuals who are self-employed, individuals who are sole proprietors, and individuals who own or operate their own business. They will receive the bulk of the benefit of this rate reduction. Some people may want to demagog some of the estimates that benefit primarily the wealthy. I disagree.

We also might keep in perspective that when President Clinton was elected, the maximum rate was 31 percent. He increased it to 39.4 percent. When we totally implement President Bush's tax reduction, the maximum rate will be 35 percent, which is still significantly higher than the 31 percent just 10 years ago.

The President's proposal that we are introducing today would also accelerate the reduction in the marriage penalty. This is a very big item to help married couples reduce their taxes. The net impact of this is it would double the 15-percent bracket that individuals have for couples.

To give you an example, individuals presently pay 15 percent, I believe, on income up to about $28,000. But couples have to start paying a 28-percent or 27-percent bracket when they have income above $47,000. We say that instead of paying 27 percent for taxable income above $47,000, no, that should be double the individual amount. So couples don't have to pay above the 15-percent bracket unless their income exceeds $56,000.

It is not very complicated. Couples should have for the 15-percent bracket twice what individuals have. Individuals pay 15 percent up to $28,000. So we doubled that amount for couples. The net impact of that is you pay 15 percent instead of 27 percent for a total of about $9,000. It saves couples a total of $1,022. If the couples have two children, they would get additional child credit. We increase the child credit, which is presently $600, to $1,000. That is an increase of $400 per child. If you have two children, that is $800 of tax credit—not deductions, tax credit. It reduces your tax bill by $800.

If you have a taxable income of $56,000, you also get the $1,122 of marriage penalty relief. You get $100 savings from the 10-percent bracket expansion. Total tax relief for a family that has taxable income of $56,800 totals over $2,000. Actually, it is $2,022. That is about a 22-percent tax cut for middle-income families. That will help thousands—millions—of families all across the country.

Also, this bill would eliminate the double taxation on corporate earnings. Presently, in the United States, unfortunately, unbelievably, we tax corporate earnings that are distributed to the owners more than almost any other country in the world. Only one country, Japan, taxes corporate earnings distributed to the owners higher than the United States.

Our combined tax rate of 35 percent corporate and the individual tax percentage, depending on the individual's income tax bracket—it could be 15 percent, it could be 30 percent, it could be 38.6 percent—if you add the 38.6 percent plus the 35 percent, it is over 70 percent. If it is 30 percent for the individual rate, and the corporation rate is 35, it is 65 percent. So for a corporation that makes $1,000 and wants to distribute that to the owners, the Federal Government gets 65 percent; and the beneficiary, the owner of the company, gets 35 percent. That is absurd. That is embarrassing. That is indefensible. And countless people—economists, the President, candidates and others—said we should eliminate this unfair double taxation of dividends.

The President has come up with a proposal to do that. I am happy to introduce it for him. I urge my colleagues—before they demagog it, before they castigate it—to look at the facts.

Does it really make sense for us to be taxing corporate distributions to all owners—incidently, the majority of owners are senior citizens—does it really make sense for us to be taxing these proceeds higher than any other country in the world but one? It makes no sense.

Does it really make sense to have the Tax Code skewed to where it really is beneficial to go into debt because you can expense your interest expense? But, oh, yes, if you go the equity route, you have to pay taxes on anything that is generated in the company. And the individual who receives the benefits pays taxes, so the Government gets two-thirds of the money, two-thirds of the distribution. That does not make sense. It discourages investment. It encourages debt. Not a good corporate policy.

Present law encourages a lot of corporate shenanigans and corporate games trying to get around taxes when they realize that such a great percentage of the distribution to owners is going to be paid in taxes—''Let's figure out other ways.'' Maybe they do it through bonuses, but they might do it through all kinds of schemes. And we have seen some of those.

This would be great corporate reform, very positive, well-needed reform, and long overdue—long overdue.

In this package that the President has proposed, it also has something I am very much in favor of: expensing for small business. I used to have a small business. But it triples the amount a small businessperson can expense from $25,000 to $75,000. In other words, if they write a check for that amount, they can expense it in the year that the check is written. That

will greatly encourage investment because they get to recoup the investment that is made in the same year the check is written—a very positive, progrowth proposal. Most jobs are created in small businesses, and this is a good, positive small business provision that will create jobs.

So we reduce taxes on business owners, sole proprietors. They would not have to pay taxes more than corporations. We would reduce taxes on married couples. We would discontinue the present policy of penalizing them for being married and filing joint returns. We would allow them to keep more of their own money. We would allow them to keep more of their own money if they have kids.

Certainly, if you have kids, it costs a lot of money to raise them. We say you should have a $1,000 tax credit per child. So for every child you have, you get to save $1,000 in taxes. I have four kids, so that is $4,000 per year. A couple with four kids would get to save $4,000 per year. That is significant. That is profamily. That is positive. That allows people who really need the money raising families to keep it.

One, we eliminate the marriage penalty, and, two, we allow them to keep more for their own kids. Very significant benefits. When you add all the benefits together, it really makes the income tax even more progressive.

The upper income groups would still pay a greater percentage of income tax, even after we pass this proposal. I can just envision people saying: Well, this is class warfare. I hope they do not play those arguments because this is very family friendly and also investment friendly and will create jobs.

We need to do some things. Revenues have been declining for the last 2 years. We need to figure out ways to get revenues to grow. That means a growing economy. It means the stock market needs to move up instead of down.

This proposal will do that. This proposal is investment friendly. And the main beneficiaries will not be just the owners, it will be the people who get a job because the investment was not going to be made without it.

So let's do some things that will create an incentive for investment, for expensing, for people to go to work, and for people who are working to be able to keep more of their own money so they can take care of their families.

That is what the President's proposal is all about. So I am delighted to introduce this today with my colleague and friend, Senator ZELL MILLER of Georgia.

I ask unanimous consent to have printed in the RECORD two charts to further explain the breakout of this proposal.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PRESIDENT BUSH'S 2004 BUDGET TAX PROPOSALS

(Dollars in billions)

	Fiscal years												
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2004–2008	2004–2013
Growth Package—Revenue Impact:													
Accelerate 10% bracket expansion	−0.978	−7.782	−6.112	−6.117	−6.495	−4.275	−3.227	−3.283	−3.326	−3.294	−3.283	−30.781	−47.194
Accelerate reduction in marginal rates	−5.808	−35.693	−17.470	−4.939	—	—	—	—	—	—	—	−58.102	−58.102
Accelerate marriage penalty relief	−2.776	−27.134	−14.680	−7.642	−3.595	−1.735	−0.424	0.000	0.000	0.000	0.000	−54.786	−55,210
Accelerate increase in child credit	−13.527	−5.060	−10.735	−8.534	−8.532	−8.502	−7.746	−4.197	0.000	0.000	0.000	−41.363	−53.306
Eliminate double taxation of dividends	−3.801	−24.874	−22.062	−28.218	−31.126	−33.952	−37.378	−40.842	−44.010	−47.246	−50.616	−140.232	−360.324
Increase the small business expensing limit	−1.023	−1.652	−1.776	−1.912	−1.601	−1.431	−1.256	−1.170	−1.235	−1.259	−1.291	−8.372	−14.583
AMT hold-harmless	−3.141	−8.534	−10.353	−6.931	—	—	—	—	—	—	—	−25.818	−25.818
Growth Package Revenue Impact	−31.054	−110.729	−83.188	−64.293	−51.349	−49.895	−50.031	−49.492	−48.571	−51.799	−55.190	−359.454	−614.537

THE JOBS AND GROWTH TAX ACT OF 2003—TAX RELIEF FOR WORKING FAMILIES

Example: *Married couple with two children.*

Taxable Income	$56,800
Total Tax Liability Under Current Law	9,042
With Enactment of The Jobs and Growth Tax Act of 2003:	
Marriage Penalty Relief	1,122
Relief from 10% Bracket Expansion	100
Relief From Child Credit Increase	800
Total Tax Relief in 2003	2,022
Tax savings of 22 percent.	

Mr. NICKLES. I urge my colleagues to seriously consider this proposal. And I welcome their support of it.

I yield the floor.

By Mr. REID (for himself, Mr. SMITH Ms. SNOWE, Ms. CANTWELL, Mr. HARKIN, Mr. LIEBERMAN, Mrs. FEINSTEIN, Mr. JEFFORDS, Mr. WYDEN, and Mr. COLEMAN):

S. 464. A bill to amend the Internal Revenue Code of 1986 to modify and expand the credit for electricity produced from renewable resources and waste products, and for other purposes; to the Committee on Finance.

Mr. REID. Mr. President, faced with uncertainties in electricity energy markets, turmoil in the Mideast, the need to cut back on the fossil fuel emissions linked to global warming, air pollution that contributes to high rates of asthma and fills even our national parks with smog, the United States must diversify its energy supply by promoting the growth of renewable energy.

Since 1999, Las Vegas electricity rates have increased by 60 percent. In the same period, natural gas prices across Nevada have doubled. We need to change the energy equation. We need to diversify the Nation's energy supply to reduce volatility and ensure a stable supply of electricity. We must harness the brilliance of the sun, the strength of the wind, and the heat of the Earth to provide clean, renewable energy for our nation.

I rise today to introduce a bill with Senators SMITH, SNOWE, CANTWELL, HARKIN, LIBERMAN, FEINSTEIN, JEFFORDS, and WYDEN expands the existing Section 45 production tax credit for renewable energy resources to cover all renewable energy resources. Our legislation accomplishes this by adding geothermal, incremental geothermal, solar, open-loop biomass, incremental hydropower, landfill gas, and animal waste to the list of renewable energy resources that would quality for a production tax credit.

Our legislation also makes the production tax credit permanent to signal America's long-term commitment to renewable energy resources. The existing production tax credit that covers wind energy, poultry waste, and closed-look biomass will expire at the end of 2003! Since it inception in 1992, the production tax credit has expired and been renewed twice; in 1999 and 2001. Development of wind energy has closely mirrored these renewal cycles. Clearly, the private investment necessary to develop renewable energy resources requires the business certainly afforded a long-term extension of the production tax credit.

Our bill allows for co-production credits to encourage blending of renewable energy with traditional fuels and provides a credit for renewable facilities on native American and native Alaskan lands. In northern Nevada, the Pyramid Lake Paiute Tribe is working with Advanced Thermal Systems to develop geothermal resources on Indian lands that will spur economic development by creating business opportunities and jobs for tribal members.

This legislation also provides production incentives to not-for-profit public power utilities and rural electric cooperatives, which serve 25 percent of the Nation's power customers, by allowing them to transfer of their credits to taxable entities.

The good news is that the production tax credit for renewable energy resources really works to promote the growth of renewable energy. In 1990, the cost of wind energy was 22.5 cents per kilowatt hour and, today, with new technology and the help of a modest

production tax credit, wind is a competitive energy source at 3 to 4 cents per kilowatt hour. In the last 5 years, wind energy has experience a 30 percent growth rate. This year, Nevada utilities have signed contracts for more then 130 MW of wind energy.

The production tax credit provides 1.8 cents for every kilowatt-hour of electricity produced. Similar to wind energy, this credit will allow geothermal energy, incremental hydropower, and landfill gas to immediately compete with fossil fuels, while biomass will follow closely behind. The Department of Energy estimates that we would increase our geothermal energy production almost ten fold, supplying ten percent of the energy needs of the West. As fantastic as it sounds, enough sunlight falls on a 100 mile by 100 miles of southern Nevada that—if covered with solar panels—could power the entire Nation.

Let's never lose sight of the fact that renewable energy resources are domestic sources of energy, and using them instead of foreign sources contributes to our energy security. Renewables provide fuel diversify and price stability. After all, the fuel—the wind, the sun, heat from the core of the earth—costs nothing. And they provide jobs, especially in rural areas that have been largely left out of American recent economic growth.

The production tax credit for renewable energy resources is a powerful, fast acting stimulus to the economy. According to the Western Government Association, the Department of Energy's Initiative to deploy 1,000 MWs of concentrated solar power in the Southwestern area of the United States by the year 2006 would create approximately 10,0000 jobs and estimated expenditures of more than 3.7 billion over 14 years. Nevada has already developed 200 Megawatts of geothermal power, with a longer-term potential of more than 2,500 Megawatts. This development will provide billions of private investment and create thousands of jobs. Our production tax credit means immediate economic development and jobs!

In the U.S. today, we get less than 3 percent of our electricity from renewable energy sources like wind, solar, geothermal, and biomass. But the potential for much greater supply is here. For example, Nevada is considered the Saudi Arabia of geothermal. My state could use geothermal energy to meet one-third of its electricity needs, but today this source of energy only supplies 2.3 percent. I'm proud to say that Nevada has adopted one of the most aggressive Renewable Portfolio Standard in the Nation, requiring that 5 percent of the State's electricity needs be met by renewable energy resources in 2003, which then grows to 15 percent by 2013.

After pouring billions of dollars into oil and gas, we need to invest in a clean energy future. Fossil fuel plants pump over 11 million tons of pollutants into our air each year. Federal energy policy must promote reductions in greenhouse gas emissions. By including landfill gas in this legislation, we systematically reduce the largest single human source of methane emissions in the United States, effectively eliminating the greenhouse gas equivalent of 223 million tons of carbon dioxide.

An article in The Journal of the American Medical Association revealed an alarming link between soot particles from power plants and motor vehicles and lung cancer and heart disease. The adverse health effects of power plant and vehicle emissions cost Americans billions of dollars in medical care, and our cost in human suffering is immeasurable. Simply put, the human cost of dirty air is staggering. If we factor in environmental and health effects, the real cost of energy becomes apparent, and renewable energy become the fuel of choice.

America's abundant and untapped renewable resources can fuel our journey into a more prosperous and safer tomorrow without compromising air and water quality.

Renewable energy is the cornerstone of a successful, forward looking, and secure energy policy for the 21st Century.

By Mrs. HUTCHISON (for herself, Ms. CANTWELL, Mr. FRIST, Mr. CORNYN, Mr. COCHRAN, Mr. THOMAS, and Mr. ALEXANDER):

S. 467. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for State and local sales taxes in lieu of State and local income taxes and to allow the State and local income tax deduction against the alternative minimum tax; to the Committee on Finance.

Mrs. HUTCHISON. Mr. President, I am pleased to introduce a bill to correct an injustice in the tax code that harms citizens in every state of this great Nation.

State and local governments have various alternatives for raising revenue. Some levy income taxes, some use sales taxes, and others use a combination of the two. The citizens who pay State and local income taxes are able to offset some of what they pay by receiving a deduction on their Federal taxes. Before 1986, taxpayers also had the ability to deduct their sales taxes.

The philosophy behind these deductions is simple: people should not have to pay taxes on their taxes. The money that people must give to one level of government should not also be taxed by another level of government.

Unfortunately, these common sense deductions have slowly been eroded over the years. First, the deduction for State and local sales tax was eliminated in the 1986 tax reform legislation. Second, the alternative minimum tax has reduced the benefit of the income tax deduction for many.

The elimination of the sales tax deduction discriminates against those living in states, such as my home State of Texas, with no income taxes. It is important to remember the lack of an income tax does not mean citizens in these States do not pay State taxes; revenues are simply collected differently.

It is unfair to give citizens from some States a deduction for the revenue they provide their State and local governments, while not doing the same for citizens from other States. Federal tax law should not treat people differently on the basis of State residence and differing tax collection methods.

This discrepancy has a significant impact on Texas. According to the Texas Comptroller, if taxpayers could deduct their sales taxes, more than $700 million would stay in the hands of Texans. This could lead to the creation of more than 16,000 new jobs and add almost $900 million in economic activity. The impact of this growth would be particularly beneficial during this period when many States are facing record-breaking deficits. At the same time, such a tax change would cost the Federal Government less than one percent of what the current State and local income tax deduction costs.

For those in states with income taxes, their tax deduction benefit has been diminished by the alternative minimum tax, AMT. People can deduct their state and local income taxes when calculating their regular taxes, but not when determining the AMT. The difference often is the reason people must pay the higher alternative tax.

In fact, state and local taxes account for 54 percent of the difference between the AMT and the regular tax calculation. This particularly hurts the 60 percent of AMT payers who are from states with higher income tax rates. Eliminating this discrepancy would go a long way toward reducing the number of people affected by the AMT.

The legislation I am offering today will fix these problems. First, it will provide all taxpayers with the option of deducting State and local sales taxes, instead of income taxes, when calculating their Federal tax. This will end the discrimination suffered by my fellow Texans and citizens of other states who do not have the option of an income tax deduction. It will also allow people from states with both a sales and an income tax to choose the most advantageous deduction.

My bill will also provide for a State and local income and sales tax deduction in the AMT. This is an important step in reducing the ballooning growth of the AMT, which will impact almost a third of all taxpayers by 2010.

The legislation I am introducing today is about reestablishing equity to the tax code and defending the important principle of eliminating taxes on taxes. I hope my fellow Senators will support this effort.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 467

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''State Sales and Income Tax Deduction Fairness Act of 2003''.

SEC. 2. DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.

(a) IN GENERAL.—Subsection (b) of section 164 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(5) GENERAL SALES TAXES.—For purposes of subsection (a)—

''(A) ELECTION TO DEDUCT STATE AND LOCAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.—

''(i) IN GENERAL.—At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

''(I) without regard to the reference to State and local income taxes,

''(II) as if State and local general sales taxes were referred to in a paragraph thereof, and

''(III) without regard to the last sentence.

''(B) DEFINITION OF GENERAL SALES TAX.—The term 'general sales tax' means a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items.

''(C) SPECIAL RULES FOR FOOD, ETC.—In the case of items of food, clothing, medical supplies, and motor vehicles—

''(i) the fact that the tax does not apply with respect to some or all of such items shall not be taken into account in determining whether the tax applies with respect to a broad range of classes of items, and

''(ii) the fact that the rate of tax applicable with respect to some or all of such items is lower than the general rate of tax shall not be taken into account in determining whether the tax is imposed at one rate.

''(D) ITEMS TAXED AT DIFFERENT RATES.—Except in the case of a lower rate of tax applicable with respect to an item described in subparagraph (C), no deduction shall be allowed under this paragraph for any general sales tax imposed with respect to an item at a rate other than the general rate of tax.

''(E) COMPENSATING USE TAXES.—A compensating use tax with respect to an item shall be treated as a general sales tax. For purposes of the preceding sentence, the term 'compensating use tax' means, with respect to any item, a tax which—

''(i) is imposed on the use, storage, or consumption of such item, and

''(ii) is complementary to a general sales tax, but only if a deduction is allowable under this paragraph with respect to items sold at retail in the taxing jurisdiction which are similar to such item.

''(F) SPECIAL RULE FOR MOTOR VEHICLES.—In the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate shall be treated as the rate of tax.

''(G) SEPARATELY STATED GENERAL SALES TAXES.—If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (other than in connection with the consumer's trade or business) to the seller, such amount shall be treated as a tax imposed on, and paid by, such consumer.

''(H) AMOUNT OF DEDUCTION TO BE DETERMINED UNDER TABLES.—

''(i) IN GENERAL.—The amount of the deduction allowed under this paragraph shall be determined under tables prescribed by the Secretary.

''(ii) REQUIREMENTS FOR TABLES.—The tables prescribed under clause (i) shall reflect the provisions of this paragraph and shall be based on the average consumption by taxpayers on a State-by-State basis, as determined by the Secretary, taking into account filing status, number of dependents, adjusted gross income, and rates of State and local general sales taxation.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 3. ALLOWANCE OF STATE AND LOCAL INCOME TAXES AGAINST ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—Section 56(b)(1)(A)(ii) of the Internal Revenue Code of 1986 (relating to limitation on deductions) is amended by inserting ''(other than State and local income taxes or general sales taxes)'' before the period.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

By Mr. KOHL (for himself, Mr. DEWINE, Mrs. FEINSTEIN, Mr. SCHUMER, Mr. REED, Ms. MIKULSKI, Mr. CORZINE, and Mr. LEVIN).

S. 469. A bill to amend chapter 44 of title 18, United States Code, to require ballistics testing of all firearms manufactured and all firearms in custody of Federal agencies; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today with my colleagues Senator DEWINE, Senator FEINSTEIN, Senator SCHUMER, Senator REED, Senator MIKULSKI, Senator CORZINE, and Senator LEVIN to reintroduce the ''Technological Resource to Assist Criminal Enforcement'' ''TRACE'' Act, a bill to require ballistics testing of all firearms manufactured or imported in the United States.

The science of ballistics testing has given police the ability to solve multiple crimes simply by comparing bullets and shell casings found at the scene of a crime to a gun seized in a seemingly unrelated incident. This comparison is possible because every gun has a unique ''fingerprint'' it leaves on spent shell casings and bullets after it is fired. Just as human fingerprints can be grouped into general classifications such as loops and whorls, but still possess individual characteristics and then analyzed for its unique characteristics, firearms evidence can be similarly grouped and then analyzed by trained technicians for unique identifying characteristics.

Let me explain more specifically how this technology works. Today, ballistics technology equipment allows firearms technicians to acquire digital images of the images of the markings made by a firearm on bullets and cartridge casings; the images then undergo an automated initial comparison. If a high confidence match emerges, experts compare the original evidence to confirm a match. Once a match is found, law enforcement can begin tracing that weapon from its original sale to the person who used it to commit the crime.

Microscopic comparison of bullets and shell casings has been in practice for many years, even before formal databases were established. However, in the past 15 years, through the use of computer databases, ballistics technology described above has developed into a systematic tool for law enforcement to solve gun crimes. Since the early 1990's, more than 250 crime labs and law enforcement agencies in more than 40 States have been operating independent ballistics systems maintained by either the Bureau of Alcohol, Tobacco, Firearms, and Explosives ''ATFE'', or the Federal Bureau of Investigation. Together, ATFE's Integrated Ballistics Identification System, ''IBIS'', and the FBI's DRUGFIRE system have been responsible for linking 5,700 guns to two or more crimes where corroborating evidence was otherwise lacking. These links have helped law enforcement and prosecutors bring thousands of dangerous criminals to justice.

Never before have the tremendous law enforcement benefits of ballistics testing been so apparent. I would like to take the opportunity to describe a few instances where ballistics technology helped solve otherwise unsolvable crimes.

Last fall, law enforcement officials used ballistics testing to match the bullets and shell casings found at the scenes of the sniper shootings in the Nation's Capital region, and later to other deadly shootings across the country. The bullets and casings were also linked to the gun that the accused assailants had in their possession when they were arrested. This ballistics information has provided vital evidence to prosecutors and will help keep the snipers behind bars.

In another example, the only evidence at the scene of a brutal homicide in Milwaukee was 9 millimeter cartridge casings—there were no other clues. But 4 months later, when a teenage male was arrested on an unrelated charge, he was found to be in possession of the firearm that had discharged those casings. Ballistics linked the two cases. Prosecutors successfully prosecuted three adult suspects for the homicide and convicted the teen in juvenile court.

On September 9, 2000, several suspects were arrested in Boston for the illegal possession of three handguns. Each of the guns was test fired, and the ballistics information was compared to evidence found at other crime scenes. The police quickly found that the three guns were used in the commission of 15 felonies in Massachusetts and Rhode Island. This routine arrest for illegal possession of firearms provided police with new leads in the investigation of 15 unsolved crimes. Without the ballistics testing, these crimes would not have been linked and might have never been solved.

As you can see, ballistics technology helps law enforcement exponentially in their efforts to solve gun crimes. But while success stories are increasingly frequent, the full potential of ballistics

testing is still untapped. One way that the Bureau of Alcohol, Tobacco, Firearms and Explosives is making ballistics testing more accessible to state and local law enforcement is through the installation of a new network of ballistics imaging machines. The final introduction of the machines across the country is almost complete and, once it is, the computers will be able to access each other and search for a greater number of images. The National Integrated Ballistics Information Network, better know as ''NIBIN,'' will be a regional network of databases that will permit law enforcement in one locality access to information stored in other gun crime databases around the entire country. According to the ATFE, ''the NIBIN program is a key element to ATFE's efforts [to remove violent offenders from America's streets].''

But ballistics testing is only as useful as the number of images in the database. Today, almost all jurisdictions are limited to images of bullets and cartridge casings that come from guns used in crimes. The TRACE Act would dramatically expand the scope of that database by mandating that all guns manufactured or imported be test fired before being placed into the stream of commerce. The images collected from the test firing would then be collected and accessible to law enforcement—and law enforcement only—for the purpose of investigating and prosecuting gun crimes.

Recently, studies done about ballistics testing and ballistics databases have been in the news. Concern has been expressed by some about the size and practicality of a large database. However, it is important to point out that this bill would merely expand upon the existing network of 16 multistate regional databases, rather than create a single large national database. In addition, accusations that systems would be log-jammed with too many entries has been refuted by ATFE ballistics experts. Since its inception, the speed and efficiency of ballistics databases has substantially increased. For example, from 1994 to 1999 the IBIS correlation speed for cartridge casings dropped from 35 seconds to 1.7 seconds, and correlation speed for bullets dropped from 4 seconds to 0.3 seconds. The conversion to NIBIN is expected to yield an even faster return of correlation results, regardless of an increase in entries.

Of course no investigative tool is perfect or effective in every single situation, not even fingerprints. However, ATFE maintains that the availability of an open-case file of many thousands of exhibits, searchable within minutes, provides invaluable information to law enforcement authorities. TRACE would enhance the current ballistics databases by giving federal, state, and local law enforcement access to even more evidence that will help them solve more gun crimes and make our communities safer.

Today, police can find out more about a human being than they can about a gun used in a crime. Law enforcement can use DNA testing, take fingerprints and blood samples, search a person's health records, peruse bank records and credit card statements, obtain phone records and get a list of book purchases to link a suspect to a crime. Yet, the bullets found at the scene of a crime often cannot be traced back to the gun used because our ballistics images database is not comprehensive. Many of those on the front lines of the fight against crime are in favor of ballistics testing. In fact, in my home state of Wisconsin, over 75 percent of police chiefs surveyed are supportive of the use of ballistics technology.

The burden on manufacturers is minimal—we authorize funds to underwrite the cost of testing—and the assistance to law enforcement is considerable. And don't take our word for it, ask the gun manufacturers and the police. Listen to what Paul Januzzo, the vice-president of the gun manufacturer Glock, said in reference to ballistics testing, ''Our mantra has been that the issue is crime control, not gun control . . . it would be two-faced of us not to want this.'' In their agreement with the Department of Housing and Urban Development, Smith & Wesson agreed to perform ballistics testing on all new handguns. And Ben Wilson, the chief of the firearms section at ATFE, emphasized the importance of ballistics testing as a investigative device, ''This [ballistics] allows you literally to find a needle in a haystack.''

To be sure, we are sensitive to the notion that law abiding hunters and sportsmen need to be protected from any misuse of the ballistics database by government. The TRACE Act explicitly prohibits ballistics information from being used for any purpose unless it is necessary for the investigation of a gun crime.

The TRACE Act will enhance a revolutionary new technology that helps solve crime. The technology is becoming more and more advanced to accommodate high volume-usage, and it is expected to continue to get better and better. Ballistics testing will help solve more gun crimes, prosecute more criminals, and ensure that more communities are protected from violence. TRACE is a worthwhile piece of crime control legislation and I hope that the Senate will move quickly to pass it.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 469

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Technological Resource to Assist Criminal Enforcement Act'' or the ''TRACE Act''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to increase public safety by assisting law enforcement in solving more gun-related crimes and offering prosecutors evidence to link felons to gun crimes through ballistics technology;

(2) to provide for ballistics testing of all new firearms for sale to assist in the identification of firearms used in crimes;

(3) to require ballistics testing of all firearms in custody of Federal agencies to assist in the identification of firearms used in crimes; and

(4) to add ballistics testing to existing firearms enforcement programs.

SEC. 3. DEFINITION OF BALLISTICS.

Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

''(36) BALLISTICS.—The term 'ballistics' means a comparative analysis of fired bullets and cartridge casings to identify the firearm from which bullets and cartridge casings were discharged, through identification of the unique markings that each firearm imprints on bullets and cartridge casings.''.

SEC. 4. TEST FIRING AND AUTOMATED STORAGE OF BALLISTICS RECORDS.

(a) AMENDMENT.—Section 923 of title 18, United States Code, is amended by adding at the end the following:

''(m)(1) In addition to the other licensing requirements under this section, a licensed manufacturer or licensed importer shall—

''(A) test fire firearms manufactured or imported by such licensees as specified by the Attorney General by regulation;

''(B) prepare ballistics images of the fired bullet and cartridge casings from the test fire;

''(C) make the records available to the Attorney General for entry into the electronic database established under paragraph (3)(B); and

''(D) store the fired bullet and cartridge casings in such a manner and for such a period as specified by the Attorney General by regulation.

''(2) Nothing in this subsection creates a cause of action against any Federal firearms licensee or any other person for any civil liability except for imposition of a civil penalty under this section.

''(3)(A) The Attorney General shall assist firearm manufacturers and importers in complying with paragraph (1) by—

''(i) acquiring, installing, and upgrading ballistics equipment and bullet and cartridge casing recovery equipment to be placed at locations readily accessible to licensed manufacturers and importers;

''(ii) hiring or designating sufficient personnel to develop and maintain a database of ballistics images of fired bullets and cartridge casings, research, and evaluation;

''(iii) providing education about the role of ballistics as part of a comprehensive firearm crime reduction strategy;

''(iv) providing for the coordination among Federal, State, and local law enforcement and regulatory agencies and the firearm industry to curb firearm-related crime and illegal firearm trafficking; and

''(v) taking other necessary steps to make ballistics testing effective.

''(B) The Attorney General shall—

''(i) establish an electronic database—

''(I) through which State and local law enforcement agencies can promptly access the ballistics records stored under this subsection, as soon as such capability is available; and

''(II) that shall not include any identifying information regarding dealers, collectors, or purchasers of firearms; and

''(ii) require training for all ballistics examiners.

''(4) The Attorney General shall conduct mandatory ballistics testing of all firearms obtained or in the possession of their respective agencies.

''(5) Not later than 3 years after the date of enactment of this subsection, and annually thereafter, the Attorney General shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report regarding the implementation of this section, including—

''(A) the number of Federal and State criminal investigations, arrests, indictments, and prosecutions of all cases in which access to ballistics records, provided under the system established under this section and under similar systems operated by any State, served as a valuable investigative tool in the prosecution of gun crimes;

''(B) the extent to which ballistics records are accessible across jurisdictions; and

''(C) a statistical evaluation of the test programs conducted pursuant to paragraph (4).

''(6) There are authorized to be appropriated to the Department of Justice $20,000,000 for each of the fiscal years 2004 through 2007 to carry out this subsection, to be used to—

''(A) install ballistics equipment and bullet and cartridge casing recovery equipment;

''(B) establish sites for ballistics testing;

''(C) pay salaries and expenses of necessary personnel; and

''(D) conduct related research and evaluation.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendment made by subsection (a) shall take effect on the date on which the Attorney General, in consultation with the Board of the National Integrated Ballistics Information Network, certifies that the ballistics system used by the Department of Justice is sufficiently developed to support mandatory ballistics testing of new firearms.

(2) BALLISTICS TESTING.—Section 923(m)(1) of title 18, United States Code, as added by subsection (a), shall take effect 2 years after the date of enactment of this Act.

(3) EFFECTIVE ON DATE OF ENACTMENT.—Section 923(m)(4) of title 18, United States Code, as added by subsection (a), shall take effect on the date of enactment of this Act.

SEC. 5. PRIVACY RIGHTS OF LAW ABIDING CITIZENS.

Ballistics information of individual guns in any form or database established by this Act may not be used for prosecutorial purposes unless law enforcement officials have a reasonable belief that a crime has been committed and that ballistics information would assist in the investigation of that crime.

By Mr. SARBANES (for himself, Mr. WARNER, Ms. MIKULSKI, Mr. LUGAR, and Mr. DURBIN):

S. 470. A bill to extend the authority for the construction of a memorial to Martin Luther King, Jr; to the Committee on Energy and Natural Resources.

Mr. SARBANES. Mr. President, I am pleased to join today with Senators WARNER, LUGAR, MIKULSKI and DURBIN in introducing legislation that would extend the legislative authority for the Martin Luther King, Jr. Memorial for an additional three years. The monument to Martin Luther King, Jr., which will be built on the Mall, will honor one of this Nation's most treasured citizens. Dr. King challenged us to live by the principles set forth at this Nation's inception, and forever changed the fabric of this country.

Despite the enormous dedication of the Martin Luther King, Jr. National Memorial Project Foundation, Inc., additional time is necessary for the Foundation to erect a fitting tribute to Dr. King. The Commemorative Works Act currently requires that construction of the Memorial begin by November 2003. However, meeting the administrative procedures and fundraising requirements of the Act has been a very slow process.

On November 12, 1996, legislation was enacted authorizing construction of the Memorial within a seven-year period. It then took Congress another two years to pass legislation authorizing placement of the Memorial in Area I of the Capital. Then the Foundation worked with the National Capital Planning Commission and the Commission for Fine Arts for over a year to locate an appropriate site for the Memorial within Area I. As a result, the Foundation was unable to select a design for the Memorial until September 2000.

This consultative process has been challenging, but it has resulted in a design for a Memorial on the Tidal Basin that will fittingly reflect the legacy of the greatest civil rights leader of our time. Initial estimates indicate that the construction costs of the Memorial alone could be as much as $60 million, and the Foundation is actively engaged in fundraising for the Memorial. However, it does not expect to have the necessary funds to receive the construction permit by the deadline of November 2003 as dictated by the Commemorative Works Act. One hundred percent of the funding must be privately financed, and the total cost of the project could near $100 million. Our legislation would give the Foundation an additional three years to raise the necessary funds to obtain the construction permit, and would ensure that work on the Memorial is completed. This extension of legislative authority has been done before for other memorials, given the length of time it usually takes to embark on a project of this magnitude, and it should be done for the Martin Luther King, Jr. Memorial.

Dr. King serves as a reminder that change is brought about most powerfully when it is done by non-violent means. This country owes much to Dr. King, most notably his legacy of nonviolent protest that has informed and influenced subsequent rights campaigns in our nation. Visitors will come to the Memorial from every part of this country and indeed the world, to be inspired anew by Dr. King's words and deeds, and the extraordinary story of his life. Mr. President, I ask my colleagues to support this important legislation and grant the Foundation the additional time it needs to complete this significant monument.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 470

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MEMORIAL TO MARTIN LUTHER KING, JR.

Section 508(b) of the Omnibus Parks and Public Lands Management Act of 1996 (110 Stat. 4157) is amended—

(1) by striking ''The establishment'' and all that follows through the period at the end and inserting the following:

''(1) IN GENERAL.—Except as provided in paragraph (2), the establishment of the memorial shall be in accordance with chapter 89 of title 40, United States Code.''; and

(2) by inserting after paragraph (1) (as designated by paragraph (1)) the following:

''(2) EXCEPTION.—Notwithstanding section 8903(e) of title 40, United States Code, the authority provided by this section terminates on November 12, 2006.''.

By Mr. FEINGOLD (for himself, Mrs. BOXER, Mr. JEFFORDS, and Mr. LIEBERMAN):

S. 473. A bill to amend the Federal Water Pollution Control Act to clarify the jurisdiction of the United States over waters of the United States; to the Committee on Environment and Public Works.

Mr. FEINGOLD. Mr. President, today I am introducing important legislation to affirm Federal jurisdiction over the waters of the United States. I am pleased to have three members of the Environment and Public Works Committee, the Senator from California, Mrs. BOXER, the Senator from Vermont, Mr. JEFFORDS, and the Senator from Connecticut, Mr. LIEBERMAN, as original cosponsors of this bill.

In the U.S. Supreme Court's January 2001 decision, Solid Waste Agency of Northern Cook County versus the Army Corps of Engineers, a 5 to 4 majority limited the authority of Federal agencies to use the so-called migratory bird rule as the basis for asserting Clean Water Act jurisdiction over nonnavigable, intrastate, isolated wetlands, streams, ponds, and other bodies of water.

This decision, known as the SWANCC decision, means that the Environmental Protection Agency and Army Corps of Engineers can no longer enforce Federal Clean Water Act protection mechanisms to protect a waterway solely on the basis that it is used as habitat for migratory birds.

In its discussion of the case, the Court went beyond the issue of the migratory bird rule and questioned whether Congress intended the Clean Water Act to provide protection for isolated ponds, streams, wetlands and other waters, as it had been interpreted to provide for most of the last 30 years. While not the legal holding of the case, the Court's discussion has resulted in a wide variety of interpretations by EPA and Corps officials that jeopardize protection for wetlands, and other waters.

The wetlands at risk include prairie potholes and bogs, familiar to many in Wisconsin, and many other types of wetlands.

In effect, the Court's decision removed much of the Clean Water Act protection for between 30 percent to 60 percent of the Nation's wetlands. An estimate from my home state of Wisconsin suggested that more than 60 percent of the wetlands in my state lost federal protection. Wisconsin is not alone. The National Association of State Wetland Managers has been collecting data from states across the country. For example, Nebraska estimates that it will lose protection for more than 40 percent of its wetlands. Indiana estimates they will lose 31 percent of total wetland acreage and 74 percent of the total number of wetlands. Delaware estimates the loss of protection for 33 percent or more of their freshwater wetlands.

These wetlands absorb floodwaters, prevent pollution from reaching our rivers and streams, and provide crucial habitat for most of the nations ducks and other waterfowl, as well as hundreds of other bird, fish, shellfish and amphibian species. Loss of these waters would have a devastating effect on our environment.

In addition, by narrowing the water and wetland areas subject to Federal regulation, the decision also shifts more of the economic burden for regulating wetlands to State and local governments. My home State of Wisconsin has passed legislation to assume the regulation of isolated waters, but many other States have not. This patchwork of regulation means that the standards for protection of wetlands nationwide is unclear, confusing, and jeopardizes the migratory birds and other wildlife that depend on these wetlands.

Since 2001, the confusion over the interpretation of the SWANCC decision is growing. On January 15, 2003, the EPA and Army Corps of Engineers published in the Federal Register an Advanced Notice of Proposed Rulemaking raising questions about the jurisdiction of the Clean Water Act. Simultaneously, they released a guidance memo to their field staff regarding Clean Water Act jurisdiction.

The agencies claim these actions are necessary because of the SWANCC case. But both the guidance memo and the proposed rulemaking go far beyond the holding in SWANCC. The guidance took effect right away and has had an immediate impact. It tells the Corps and EPA staff to stop asserting jurisdiction over isolated waters without first obtaining permission from headquarters. Based on this guidance, waters that the EPA and Corps judge to be outside the Clean Water Act can be filled, dredged, and polluted without a permit or any other long-standing Clean Water Act safeguard.

The rulemaking announces the Administration's intention to consider even broader changes to Clean Water Act coverage for our waters. Specifically, the agencies are questioning whether there is any basis for asserting Clean Water Act jurisdiction over additional waters, like intermittent streams. The possibility for a redefinition of our waters is troubling because there is only one definition of the term ''water'' in the Clean Water Act. The wetlands program, the point source program which stops the dumping of pollution, and the non-point program governing polluted runoff all depend on this definition.

If we don't protect a category of waters from being filled under the wetlands program, we also fail to protect them from having trash or raw sewage dumped in them, or having other activities that violate the Clean Water Act conducted in them as well.

Congress needs to re-establish the common understanding of the Clean Water Act's jurisdiction to protect all waters of the U.S.—the understanding that Congress held when the Act was adopted in 1972—as reflected in the law, legislative history, and longstanding regulations, practice, and judicial interpretations prior to the SWANCC decision.

The proposed legislation does three things, and it is a very simple bill. It adopts a statutory definition of ''waters of the United States'' based on a longstanding definition of waters in the EPA and Corps of Engineers' regulations. Second, it deletes the term navigable from the Act to clarify that Congress's primary concern in 1972 was to protect the nation's waters from pollution, rather than just sustain the navigability of waterways, and to reinforce that original intent. Finally, it includes a set of findings that explain the factual basis for Congress to assert its constitutional authority over waters and wetlands on all relevant Constitutional grounds, including the Commerce Clause, the Property Clause, the Treaty Clause, and Necessary and Proper Clause.

In conclusion, I am very pleased to have the support of so many environmental and conservation groups, and well as organizations that represent those who regulate and manage our country's wetlands, such as: the Natural Resources Defense Council, Earthjustice, the National Wildlife Federation, Sierra Club, American Rivers, the National Audubon Society, U.S. Public Interest Research Group, Defenders of Wildlife, the Ocean Conservancy, Trout Unlimited, the Izaac Walton League, and the Association of State Floodplain Managers. They know, as I do, that we need to re-affirm the federal government's role in protecting our water. This legislation is a first step in doing just that.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 473

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Clean Water Authority Restoration Act of 2003''.

SEC. 2. PURPOSES.

The purposes of this Act are as follows:

(1) To reaffirm the original intent of Congress in enacting the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816) to restore and maintain the chemical, physical, and biological integrity of the waters of the United States.

(2) To clearly define the waters of the United States that are subject to the Federal Water Pollution Control Act.

(3) To provide protection to the waters of the United States to the fullest extent of the legislative authority of Congress under the Constitution.

SEC. 3. FINDINGS.

Congress finds the following:

(1) Water is a unique and precious resource that is necessary to sustain human life and the life of animals and plants.

(2) Water is used not only for human, animal, and plant consumption, but is also important for agriculture, transportation, flood control, energy production, recreation, fishing and shellfishing, and municipal and commercial uses.

(3) In enacting amendments to the Federal Water Pollution Control Act in 1972 and through subsequent amendment, including the Clean Water Act of 1977 (91 Stat. 1566) and the Water Quality Act of 1987 (101 Stat. 7), Congress established the national objective of restoring and maintaining the chemical, physical, and biological integrity of the waters of the United States and recognized that achieving this objective requires uniform, minimum national water quality and aquatic ecosystem protection standards to restore and maintain the natural structures and functions of the aquatic ecosystems of the United States.

(4) Water is transported through interconnected hydrologic cycles, and the pollution, impairment, or destruction of any part of an aquatic system may affect the chemical, physical, and biological integrity of other parts of the aquatic system.

(5) Protection of intrastate waters, along with other waters of the United States, is necessary to restore and maintain the chemical, physical, and biological integrity of all waters in the United States.

(6) The regulation of discharges of pollutants into interstate and intrastate waters is an integral part of the comprehensive clean water regulatory program of the United States.

(7) Small and periodically-flowing streams comprise the majority of all stream channels in the United States and serve critical biological and hydrological functions that affect entire watersheds, including reducing the introduction of pollutants to large streams and rivers, and especially affecting the life cycles of aquatic organisms and the flow of higher order streams during floods.

(8) The pollution or other degradation of waters of the United States, individually and in the aggregate, has a substantial relation to and effect on interstate commerce.

(9) Protection of the waters of the United States, including intrastate waters, is necessary to prevent significant harm to interstate commerce and sustain a robust system of interstate commerce in the future.

(10) Waters, including wetlands, provide protection from flooding, and draining or filling wetlands and channelizing or filling streams, including intrastate wetlands and streams, can cause or exacerbate flooding,

placing a significant burden on interstate commerce.

(11) Millions of people in the United States depend on wetlands and other waters of the United States to filter water and recharge surface and subsurface drinking water supplies, protect human health, and create economic opportunity.

(12) Millions of people in the United States enjoy recreational activities that depend on intrastate waters, such as waterfowl hunting, bird watching, fishing, and photography and other graphic arts, and those activities and associated travel generate billions of dollars of income each year for the travel, tourism, recreation, and sporting sectors of the economy of the United States.

(13) Activities that result in the discharge of pollutants into waters of the United States are commercial or economic in nature.

(14) States have the responsibility and right to prevent, reduce, and eliminate pollution of waters, and the Federal Water Pollution Control Act respects the rights and responsibilities of States by preserving for States the ability to manage permitting, grant, and research programs to prevent, reduce, and eliminate pollution, and to establish standards and programs more protective of a State's waters than is provided under Federal standards and programs.

(15) Protecting the quality of and regulating activities affecting the waters of the United States is a necessary and proper means of implementing treaties to which the United States is a party, including treaties protecting species of fish, birds, and wildlife.

(16) Protecting the quality of and regulating activities affecting the waters of the United States is a necessary and proper means of protecting Federal land, including hundreds of millions of acres of parkland, refuge land, and other land under Federal ownership and the wide array of waters encompassed by that land.

(17) Protecting the quality of and regulating activities affecting the waters of the United States is necessary to protect Federal land and waters from discharges of pollutants and other forms of degradation.

SEC. 4. DEFINITION OF WATERS OF THE UNITED STATES.

Section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362) is amended—

(1) by striking paragraph (7);

(2) by redesignating paragraphs (8) through (23) as paragraphs (7) through (22), respectively; and

(3) by adding at the end the following:

''(23) WATERS OF THE UNITED STATES.—The term 'waters of the United States' means all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and all impoundments of the foregoing, to the fullest extent that these waters, or activities affecting these waters, are subject to the legislative power of Congress under the Constitution.''.

SEC. 5. CONFORMING AMENDMENTS.

The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) is amended—

(1) by striking ''navigable waters of the United States'' each place it appears and inserting ''waters of the United States'';

(2) in section 304(l)(1) by striking ''NAVIGABLE WATERS'' in the heading and inserting ''WATERS OF THE UNITED STATES''; and

(3) by striking ''navigable waters'' each place it appears and inserting ''waters of the United States''.

By Mr. THOMAS:

S. 475. A bill to reform the nation's outdated laws relating to the electric industry, improve the operation of our transmission system, enhance reliability of our electric grid, increase consumer benefits from whole electric competition and restore investor confidence in the electric industry; to the Committee on Energy and Natural Resources.

Mr. THOMAS. Mr. President, I come to the floor to talk about one of the things that is so important. Obviously, items connected with terrorism, the war in Iraq have to be dealt with. We have to deal with heightened homeland security and related issues. Health care is an area we need to talk about. Prescription drugs is in the process of this.

One issue that is particularly important is an energy policy. I don't think there has ever been a time when it has been more apparent and more important to deal with energy policy. We have an economy, prices with gas and energy that are high. We have uncertainty, certainly, in the Middle East. We have had a Venezuelan problem. We had a very cold winter. We cannot seem to come together to put together a policy that will allow us to move forward, an aggressive energy policy. I would like to talk briefly about a component of that which I think is very important, and that is an electric component.

I rise today to introduce the Electric Transmission Reliability and Enhancement Act of 2003. It is my intention to build on a changing wholesale, competitive, open access market and to suggest that we build that into a policy. Things have changed in the way energy is generated, the way energy is transmitted, the way energy is sold. We need to change our policy, as well.

Very simply, what we have is: In years past, there was a generator that generated for their own distribution area. That was pretty simple. Prices were controlled. It was a simple technique. Now we have more and more merchant generators, people who do not have a constituency or distribution system of their own but they sell into the marketplace. This is good. There is competition. And we will see more and more of that. But to do that, we have to update our laws and we have to update the regulations that go with that. My legislation would extend and improve open nondiscriminatory access policies. Access to transmission would remove antiquated Federal barriers that stand in the way of competitive wholesale markets. Wholesale markets that are competitive are new. We have to change to meet those needs. We have to encourage increased investments in our transmission system and establish reliability standards.

We saw what happened in California 2 years ago. If there is no reliability, we cannot depend upon getting that energy to people's homes, to businesses, and then we have a very difficult situation.

Particularly what has changed now is it is interstate. For years we grew up with the fact that in your State the State controlled both the generation and the distribution, and that worked well. Now we go across interstate lines and there needs to be something different.

Legislatively we have to pare down our wish list so we get to the bare essentials and keep those things that are necessary.

It seems clear, if we are going to have a truly wholesale market, we need to ensure that all the industry participants play by the same rules. Only Congress can give FERC, the Federal Energy Regulatory Commission, the tools it needs to ensure that all participants get treated fairly in a competitive marketplace. Under the Federal law, currently FERC has no jurisdiction or authority over transmission owned by public power agencies, municipals, cooperatives, yet they want to participate and need to participate and should participate. Many of them—most—are willing to participate.

These nonregulated utilities represent 52 percent of the total, so we do not want to move forward with FERC's so-called market plan. I think it goes too far getting into the authority of the States. But there are some changes that need to be made, and we would like to do that.

We also need to protect those cooperatives. I grew up in a area of cooperatives and spent much of my life working with cooperatives. So we have given that break. Those that sell less than 4 million megawatt hours per year are entirely exempt. We think that is as it should be.

We would repeal the Public Utility Holding Company Act, PUHCA, because it needs to be restructured and the deployment of capital in this industry needs to go where it is desperately needed. We need to do that. There is ample regulation over those investments now in the existing business. We want to make it easier for people to be able to invest, produce competitively, and go into the marketplace.

The Department of Justice, Federal Trade Commission, and the State commissions would still be able to monitor rates and prevent cross-subsidies. So my legislation would prospectively eliminate mandatory purchase and sales obligations of PURPA, one that was put in a very long time ago. Despite the State administering it, it causes favoritism to many utilities and changes things.

Over the years the grid has been protected through voluntary standards and that is exactly right. But what we are now faced with is to have RTOs, regional transportation organizations, where they can make those decisions within the RTO. There would be a Western one, a Midwestern one, a New England one, and so on. But then connecting with those will be an interstate, like an interstate highway. That has to, of course, be organized and controlled by a national group because it serves all these different ones.

So what we need is to modernize our system so we can accommodate things that have changed. Reliability organizations must be run by market participants and be overseen by FERC. Reliability organizations must be made up of representatives of everyone who is affected: residential, commercial, industrial. That can be done, and this provides an opportunity to do that.

During our discussions last year, we were made to address some of the more egregious behavior and found a great deal of issues that needed to be dealt with—market manipulation, those kinds of things. This is very complex. I believe we can address these issues with regulatory agencies, things that truly can exist.

So my legislation would provide a greater price in the transmission of availability of information and outlaw the practice of roundtrip trading. In the past we found some trading where they went around, got it back, made a profit on the sale, and served no one.

We prohibit the reporting of false information for the purpose of manipulating price indices. Again, we go back a little bit to the California situation, where there obviously is a great need to do some opening up so there is visibility of what is happening. That is what we are seeking to do. It would increase civil and criminal penalties for the violation of the Federal Power Act and would accelerate the effective dates of refunds and so on.

In the end, it is about consumers, it is about serving consumers, it is about competition, it is about reliability, it is about keeping the lights on—the part of energy that probably affects more people and more businesses than any other. It is my hope that the Electric Transmission Reliability Enhancement Act of 2003 will produce a more reliable, efficient transmission system, a more dependable and more affordable product for the end user, and perhaps more than anything else, bring our system and our oversight into the modern time of electric generation and transmission.

Things change. We need to change. Now is the time. We will have an energy bill. It needs to have an energy component.

Mr. President, any comprehensive energy bill must contain an electric component. That is why, today, I rise to introduce the ''Electric Transmission and Reliability Enhancement Act of 2003.'' It is my intention to build on the competitive wholesale open access policies adopted by the Congress in the 1992 Energy Policy Act. My legislation would extend and improve these open, non-discriminatory access policies; remove antiquated federal statutory barriers that stand in the way of competitive wholesale markets; encourage increased investment in our transmission system and establish enforceable reliability standards to help ensure the continued reliability of the interstate transmission system.

The state of the industry is far weaker financially than it has been in years. Billions of dollars of shareholder value has evaporated. Access to capital is becoming an important issue for large segments of the industry that are fighting for survival. In addition, the Federal Energy Regulatory Commission, FERC, policy regarding wholesale markets seems to be in a state of constant change. The Standard Market Design, SMD, Notice of Proposed Rulemaking, NOPR, has divided regulators and industry participants in a way that may be unprecedented, threatening more years of rulemakings, litigation and regulatory uncertainty.

If we are to legislate successfully, we will have to par down our wish list to the bare essentials, plus those issues necessary for the electric industry to attract the capital it needs to keep our lights on. Last year, the Enron fallout dominated the debate. By being on the defensive most of last year, it was not possible to successfully advance those issues most important to consumers and the industry that serves them.

It seems clear that if truly competitive wholesale markets are to exist, there is a need to ensure that all industry participants play by the same rules. While FERC has tried to ensure this, the Commission's tools are limited. Only Congress can give FERC the tools it needs to ensure that all industry participants in competitive wholesale markets play by the same rules.

The Wyoming State commissioners wrote that ''under present Federal law the FERC has no jurisdiction or authority over transmission facilities owned by public power agencies, municipalities and cooperatives. In the West these types of entities own a substantial portion, perhaps as much as half of the interstate electric transmission system.'' As a matter of fact, in the Western Electric Coordinating Council, an area that encompasses all or part of 11 Western States and parts of Canada, non-FERC jurisdictional facilities account for 52 percent of transmission miles.

The Wyoming commissioners claim that, ''without the full participation of all of those who own transmission in the West, the FERC's wholesale market initiative will fail to provide the full spectrum of benefits Congress expected when it created wholesale electricity markets. System optimization requires that bulk power be able to move freely throughout the interconnected system without regard to who owns the facilities over which the power travels. Removing the institutional impediments to the free movement of bulk power is also requisite to identifying the physical constraints that exist in the western system. Proper planning for the relief of such constraints depends on properly identifying and quantifying them, absent other economic and institutional constraints.''

They go on to say that such a vision for the future of wholesale power markets makes a compelling case for the inclusion of all facilities which can be used to move bulk power across the West, regardless of ownership. Anything less than 100 percent participation by transmission owning entities will simply perpetuate some level of inefficiency in the system and will continue to afford those who do not participate the ability to favor their own generation resources.

My legislation would permit FERC to require certain nonregulated utilities to offer transmission serviced at comparable rates to those they charge themselves, and on terms and conditions comparable to those applicable to jurisdictional public utilities. Currently nonregulated transmitting utilities would not be subject to the full panoply of FERC regulation under this provision. Instead, a ''light handed'' form of regulation would apply and small nonregulated entities, such as those that sell less than 4,000,000 MW/h per year, would be entirely exempt from these nondiscrimination requirements.

It also seems clear that the Public Utility Holding Company Act PUHCA, is hindering necessary restructuring of the industry and the deployment of capital into an industry that desperately needs it. Investors are deterred simply because they do not want to deal with the PUHCA rules and restrictions. If repealed, utility securities will continue to be regulated by the Securities and Exchange Commission, SEC, FERC and most state commissions. Mergers and acquisitions of jurisdictional assets would still require FERC and state commission approval and review by Department of Justice, DOJ, and the Federal Trade Commission, FTC. FERC and State commissions would still be able to monitor rates and prevent cross-subsidies.

Despite State progress in administering the Public Utility Regulatory Policies Act of 1978, PURPA, more intune with markets, it is clear that PURPA continues to provide special privileges to certain favored generators at the expense of utilities and their customers. Like PUHCA, PURPA is no longer needed in today's competitive wholesale markets. My legislation prospectively eliminates the mandatory purchase and sell obligations of PURPA.

Over the years the grid has been well protected through voluntary standards established by the North American Electric Reliability Council, NERC, NERC's voluntary reliability standards—which are not enforceable—have generally been complied with by the electric power industry. But with the opening of the wholesale power market to competition, our transmission grid is being used in ways for which it was not designed. New system strains are also being created by the breakup of vertically integrated utilities and by the emergence of new market structures and participants. The results of these changes have been an increase in the number and severity of violations of NERC's voluntary rules.

My legislation converts the existing NERC voluntary reliability system into a mandatory reliability system. A nation-wide organization would have the authority to establish and enforce reliability standards, and take into account regional differences. The new reliability organization will be run by market participants, and will be overseen by the FERC in the U.S. The reliability organization will be made up of representatives of everyone who is affected—residential, commercial and industrial consumers; state public utility commissions; independent power producers; electric utilities and others. There is no question that we need a new system to safeguard the integrity of our electric grid. My legislation would do this, using language that was effectively agreed upon last fall by House and Senate conferees for the energy bill.

During discussions last year, efforts were made to address some of the more egregious behavior and attempted market manipulation through legislation. While this area is obviously very complex, I believe that we need to address this issue if regulatory gaps truly do exist. I realize my attempt might not be perfect, but I wanted to intimate discussion on this very important topic if, in fact, regulatory agencies do need additional authority to police and monitor the industry.

My legislation will provide greater price and transmission availability information, outlaw the practice of round trip trading and prohibit reporting of false information for the purpose of manipulating price indices. In addition, I've included authority the FERC has requested and that would increase civil and criminal penalties for violation of the Federal Power Act and accelerate the refund effective date to the date of filing of a complaint.

In the end it's about the consumer. It is my hope and vision that the ''Electric Transmission and Reliability and Enhancement Act of 2003'' I am introducing today will produce a more reliable and efficient transmission system and that these improvements will result in a more dependable and affordable product for the end user. This legislation is the best solution to move forward with a better product for all classes of consumers and the industry as a whole.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 475

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Electric Transmission and Reliability Enhancement Act of 2003''.

TITLE I—TRANSMISSION IMPROVEMENT

SEC. 101. OPEN NON-DISCRIMINATORY ACCESS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting after section 211 the following:

''OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES

SEC. 211A. (a) Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services—

''(1) at rates that are comparable to those that the unregulated transmitting utility charges itself, and

''(2) on terms and conditions (not relating to rates) that are comparable to those under Commission rules that require public utilities to offer open access transmission services and that are not unduly discriminatory or preferential.

''(b) The Commission shall exempt from any rule or order under this subsection any unregulated transmitting utility that—

''(1) sells no more than 4,000,000 megawatt hours of electricity per year;

''(2) does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion thereof); or

''(3) meets other criteria the Commission determines to be in the public interest.

''(c) The rate changing procedures applicable to public utilities under subsections (c) and (d) of section 205 are applicable to unregulated transmitting utilities for purposes of this section.

''(d) In exercising its authority under paragraph (1) of subsection (a), the Commission may remand transmission rates to an unregulated transmitting utility for review and revision where necessary to meet the requirements of subsection (a).

''(e) The provision of transmission services under subsection (a) does not preclude a request for transmission services under 211.

''(f) The Commission may not require a State or municipality to take action under this section that constitutes a private business use for purposes of section 141 of the Internal Revenue Code of 1986 (26 U.S.C. 141).

''(g) For purposes of this subsection, the term 'unregulated transmitting utility' means an entity that—

''(1) owns or operates facilities used for the transmission of electric energy in interstate commerce, and

''(2) is either an entity described in section 201(f) or a rural electric cooperative.''.

SEC. 102. FEDERAL AGENCY COORDINATION.

The Department of Energy shall be the lead agency for conducting environmental review (for purposes of the National Environmental Policy Act of 1969) of the establishment and modification of electric power transmission corridors across federal lands. The Secretary of Energy shall coordinate with Federal agencies, including Federal land management agencies, to ensure the timely completion of environmental reviews pertaining to such corridors and may set deadlines for the completion of such reviews. For purposes of this section, the term ''Federal land management agencies'' means the Bureau of Land Management, the United States Forest Service, the United States Fish and Wildlife Service, and the Department of Defense. For purposes of this section, ''Federal lands'' means all lands owned by the United States except lands in the National Park System or the national wilderness preservation system, or such other lands as the President may designate.

SEC. 103. PRIORITY FOR RIGHTS-OF-WAY ACROSS FEDERAL LANDS.

Section 501 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761) is amended by adding the following new subsection at the end thereof:

''(e) In administering the provisions of this title, the Secretary of the Interior and the Secretary of Agriculture shall each shall give a priority to applications for rights of way for electric power transmission corridors.''.

SEC. 104. ELECTRIC RELIABILITY STANDARDS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting the following new section at the end thereof:

''SEC. 215. ELECTRIC RELIABILITY

''(a) DEFINITIONS.—For purposes of this section—

''(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and

''(B) electric energy from generation facilities needed to maintain transmission system reliability.

The term does not include facilities used in the local distribution of electric energy.

''(2) The terms 'Electric Reliability Organization' and 'ERO' mean the organization certified by the Commission under subsection (c) the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.

''(3) The term 'reliability standard' means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system facilities and the design of planned additions or modifications to such facilities to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

''(4) The term 'reliable operation' means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance or unanticipated failure of system elements.

''(5) The term 'Interconnection' means a geographic area in which the operation of bulk-power system components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain reliable operation of the facilities within their control.

''(6) The term 'transmission organization' means a regional transmission organization, independent system operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

''(7) The term 'regional entity' means an entity having enforcement authority pursuant to subsection (e)(4).

''(b) JURISDICTION AND APPLICABILITY.—(1) The Commission shall have jurisdiction, within the United States, over the ERO certified by the Commission under subsection (c), any regional entities, and all users, owners and operators of the bulk-power system, including but not limited to the entities described in section 201(f), for purposes of approving reliability standards established under this section and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.

''(2) The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

''(c) CERTIFICATION.—Following the issuance of a Commission rule under subsection (b)(2), any person may submit an application to the Commission for certification

as the Electric Reliability Organization (ERO). The Commission may certify one such ERO if the Commission determines that such ERO—

''(1) has the ability to develop and enforce, subject to subsection (e)(2), reliability standards that provide for an adequate level of reliability of the bulk-power system;

''(2) has established rules that—

''(A) assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any ERO committee or subordinate organizational structure;

''(B) allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section;

''(C) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) (including limitations on activities, functions, or operations, or other appropriate sanctions);

''(D) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties; and

''(E) provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.

''(d) RELIABILITY STANDARDS.—(1) The Electric Reliability Organization shall file each reliability standard or modification to a reliability standard that it proposes to be made effective under this section with the Commission.

''(2) The Commission may approve by rule or order a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.

''(3) The Electric Reliability Organization shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

''(4) The Commission shall remand to the Electric Reliability Organization for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

''(5) The Commission, upon its own motion or upon complaint, may order the Electric Reliability Organization to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

''(6) The final rule adopted under subsection (b)(2) shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization. Such transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted approved, or ordered by the Commission until—

''(A) the Commission finds a conflict exists between a reliability standard and any such provision;

''(B) the Commission orders a change to such provision pursuant to section 206 of this part; and

''(C) the ordered change becomes effective under this part.

If the Commission determines that a reliability standard needs to be changed as a result of such a conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5) of this subsection.

''(e) ENFORCEMENT.—(1) The ERO may impose, subject to paragraph (2), a penalty on a user or owner or operator of the bulk-power system for a violation of a reliability standard approved by the Commission under subsection (d) if the ERO, after notice and an opportunity for a hearing—

''(A) finds that the user or owner or operator has violated a reliability standard approved by the Commission under subsection (d); and

''(B) files notice and the record of the proceeding with the Commission.

''(2) A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after the Electric Reliability Organization files with the Commission notice of the penalty and the record of proceedings. Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission. Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before the Electric Reliability Organization and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate, remand to the Electric Reliability Organization for further proceedings. The Commission shall implement expedited procedures for such hearings.

''(3) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system, if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a reliability standard.

''(4) The Commission shall establish regulations directing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards under paragraph (1) if—

''(A) the regional entity is governed by an independent, balanced stakeholder, or combination independent and balanced stakeholder board;

''(B) the regional entity otherwise satisfies the provisions of subsection (c)(1) and (2); and

''(C) the agreement promotes effective and efficient administration of bulk-power system reliability.

The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved. Such regulation may provide that the Commission may assign the ERO's authority to enforce reliability standards under paragraph (1) directly to a regional entity consistent with the requirements of this paragraph.

''(5) The Commission may take such action as is necessary or appropriate against the ERO or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity.

''(6) Any penalty imposed under this section shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.

''(f) CHANGES IN ELECTRICITY RELIABILITY ORGANIZATION RULES.—The Electric Reliability Organization shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or compliant, may propose a change to the rules of the Electric Reliability Organization. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminary or preferential, is in the public interest, and satisfies the requirements of subsection(c).

''(g) RELIABILITY REPORTS.—The Electric Reliability Organization shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.

''(h) COORDINATION WITH CANADA AND MEXICO.—The President is urged to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the Electric Reliability Organization in the United States and Canada or Mexico.

''(i) SAVINGS PROVISIONS.—(1) The Electric Reliability Organization shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

''(2) This section does not authorize the Electric Reliability Organization or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

''(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard.

''(4) Within 90 days of the application of the Electric Reliability Organization or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the Electric Reliability Organization.

''(5) The Commission, after consultation with the Electric Reliability Organization, may stay the effectiveness of any State action, pending the Commission's issuance of a final order.

''(j) REGIONAL ADVISORY BODIES.—The Commission shall establish a regional advisory body on the petition of at least two-

thirds of the States within a region that have more than one-half of their electric load served within the region. A regional advisory body shall be composed of one member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the Electric Reliability Organization, a regional entity, or the Commission regarding the governance of an existing or proposed regional entity within the same region, whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest, whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.

''(k) APPLICATION TO ALASKA AND HAWAII.—The provisions of this section do not apply to Alaska or Hawaii.''.

TITLE II—ELIMINATION OF COMPETITIVE BARRIERS

SUBTITLE A—PROVISIONS REGARDING THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

SEC. 201. DEFINITIONS.

For the purpose of this subtitle:

(1) The term ''affiliate'' of a company means any company 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) the term ''company'' means a corporation, partnership, association, joint stock company, business rust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) The term ''exempt wholesale generator'' and ''foreign utility company'' have the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power.

(8) the term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such persons be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) The term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) The term ''person'' means an individual or company.

(13) The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) The term ''public utility company'' means an electric utility company or a gas utility company.

(15) The term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies.

(16) The term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 202. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79a and following) is repealed, effective 12 months after the date of enactment of this Act.

SEC. 203. FEDERAL ACCESS TO BOOKS AND RECORDS.

(a) In General.—Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) Affiliate Companies.—Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) HOLDING COMPANY SYSTEMS.—The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission determines are relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) CONFIDENTIALITY.—No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

SEC. 204. STATE ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Upon the written request of a State commission having jurisdiction to regulate a public utility company in a holding company system, and subject to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any trade secrets or sensitive commercial information, a holding company or any associate company or affiliate thereof, wherever located, shall produce for inspection books, accounts, memoranda, and other records that—

(1) have been identified in reasonable detail in a proceeding before the State commission;

(2) the State commission determines are relevant to costs incurred by such public utility company; and

(3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

(b) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law concerning the provision of books, accounts, memoranda, or other records, or in any way limit the rights of any State to obtain books, accounts, memoranda, or other records, under federal law, contract, or otherwise.

(c) COURT JURISDICTION.—Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

SEC. 205. EXEMPTION AUTHORITY.

(a) RULEMAKING.—Not later 90 days after the date of enactment of this Act, the Commission shall promulgate a final rule to exempt from the requirements of section 203 any person that is a holding company, solely with respect to one or more—

(1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978;

(2) exempt wholesale generators; or

(3) foreign utility companies.

(b) OTHER AUTHORITY.—If, upon application or upon its own motion, the Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility company or natural gas company, or if the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility company, the Commission shall exempt such person or transaction from the requirements of section 203.

SEC. 206. AFFILIATE TRANSACTIONS.

Nothing in this subtitle shall preclude the Commissioner or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public utility company, public utility, or natural gas company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public utility company, public utility, or natural gas company from an associate company.

SEC. 207. APPLICABILITY.

No provision of this subtitle shall apply to, or be deemed to include—

(1) the United States;

(2) a State or any political subdivision of a State;

(3) any foreign governmental authority not operating in the United States;

(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), or (3) acting as such in the course of such officer, agent, or employee's official duty.

SEC. 208. EFFECT ON OTHER REGULATIONS.

Nothing in this subtitle precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

SEC. 209. ENFORCEMENT.

The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power Act (16 U.S.C. 825e–825p) to enforce the provisions of this subtitle.

SEC. 210. SAVINGS PROVISIONS.

(a) IN GENERAL.—Nothing in this subtitle prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the date of enactment of this Act, if that person continues to comply with the terms of any such authorization, whether by rule or by order.

(b) EFFECT ON OTHER COMMISSION AUTHORITY.—Nothing in this subtitle limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a and following) (including section 301 of that Act) or the Natural Gas Act (15 U.S.C. 717 and following) (including section 8 of that Act).

SEC. 211. IMPLEMENTATION.

Not later than 12 months after the date of enactment of this Act, the Commission shall—

(1) promulgate such regulations as may be necessary or appropriate to implements this subtitle; and

(2) submit to Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this subtitle and the amendments made by this subtitle.

SEC. 212. TRANSFER OR RESOURCES.

All books and records that relate primarily to the functions transferred to the Commission under this subtitle shall be transferred from the Securities and Exchange Commission to the Commission.

SEC. 213. EFFECTIVE DATE.

This subtitle shall take effect 12 months after the date of enactment of this Act.

SEC. 214. CONFORMING AMENDMENT TO THE FEDERAL POWER ACT.

Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed.

SUBTITLE B—PROVISIONS REGARDING THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

SEC. 215. PROSPECTIVE REPEAL OF SECTION 210.

(a) NEW CONTRACTS.—After the date of enactment of this Act, no electric utility shall be required to enter into a new contract or obligation to purchase or to sell electric energy or capacity pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3).

(b) EXISTING RIGHTS AND REMEDIES NOT AFFECTED.—Nothing in this Act affects the rights or remedies of any party with respect to the purchase or sale of electric energy or capacity from or to a facility determined to be a qualifying small power production facility or a qualifying cogeneration facility under section 210 of the Public Utility Regulatory Policies Act of 1978 pursuant to any contract or obligation to purchase or to sell electric energy or capacity in effect on the date of enactment of this Act, including the right to recover the costs of purchasing such electric energy or capacity.

SEC. 216. RECOVERY OF COSTS.

In order to assure recovery by electric utilities purchasing electric energy or capacity from a qualifying facility pursuant to any legally enforceable obligation entered into or imposed pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978 prior to the date of enactment of this Act, of all costs associated with such purchases, the Commission shall promulgate and enforce such regulations as may be required to assure that no such electric utility shall be required directly or indirectly to absorb the costs associated with such purchases from a qualifying facility. Such regulations shall be treated as a rule enforceable under the Federal Power Act (16 U.S.C. 791a–825r).

SEC. 217. DEFINITIONS.

For purposes of this subtitle, the terms ''Commission'', ''electric utility'', ''qualifying cogeneration facility'', and ''qualifying small power production facility'', shall have the same meanings as provided in the Public Utility Regulatory Policies Act of 1978, and the term ''qualifying facility'' shall mean either a qualifying small production facility or a qualifying cogeneration facility as defined in such Act.

TITLE III—MARKET TRANSPARENCY, ANTIMANIPULATION AND ENFORCEMENT

SUBTITLE A—MARKET TRANSPARENCY, ANTI-MANIPULATION AND ENFORCEMENT

SEC. 301. MARKET TRANSPARENCY RULES.

Part II of the Federal Power Act is amended by adding after section 215 as added by this Act the following:

''SEC. 216. MARKET TRANSPARENCY RULES.

''(a) COMMISSION RULES.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules establishing an electronic information system to provide the Commission and the public with access to such information as is necessary or appropriate to facilitate price transparency and participation in markets subject to the Commission's jurisdiction. Such systems shall provide statistical information about the availability and market price of wholesale electric energy and transmission services to the Commission, State commissioners, buyers and sellers of wholesale electric energy, users of transmission services, and the public on a timely basis.

''(b) INFORMATION REQUIRED.—The Commission shall require—

''(1) each regional transmission organization or, where no regional transmission organization is operating, each transmitting utility to provide information about the available capacity of transmission facilities operated by the organization or transmitting utility; and

''(2) each regional transmission organization or broker or exchange to provide aggregate information about the amount and price of physical sales of electric energy at wholesale in interstate commerce it transacts.

''(c) DEFINITION.—For purposes of this section, the term 'broker or exchange' means an entity that matches offers to sell and offers to buy physical sales of wholesale electric energy in interstate commerce.

''(d) PROTECTION OF SENSITIVE INFORMATION.—The Commission shall exempt from disclosure information it determines would, if disclosed, be detrimental to the operation of an effective market.''.

SEC. 302. MARKET MANIPULATION.

(a) Part II of the Federal Power Act is amended by adding after section 216 as added by this Act the following:

''SEC. 217. PROHIBITION ON FILING FALSE INFORMATION.

''It shall be a violation of this Act for any person willfully and knowingly to report any information relating to the price of electricity sold at wholesale, which information the person knew to be false at the time of the reporting, to any governmental or non-governmental entity and with the intent to manipulate the date being compiled by such entity.''.

''SEC. 218. PROHIBITION ON ROUND TRIP TRADING.

''(a) PROHIBITION.—It shall be a violation of this Act for any person willfully and knowingly to enter into any contract or other arrangement to execute a ''round-trip trade'' for the purchase or sale of electric energy at wholesale.

''(b) DEFINITION OF ROUND-TRIP TRADE.—For the purposes of this section, the term 'round trip trade' means a transaction, or combination of transactions, in which a person or other entity—

''(1) enters into a contract or other arrangement to purchase from, or sell to, any other person or other entity electric energy at wholesale;

''(2) simultaneously with entering into the contract or arrangement described in paragraph (1), arranges a financially offsetting trade with such other person or entity for the same such electric energy, at the same location, price, quantity and terms so that, collectively, the purchase and sale transactions in themselves result in no financial gain or loss; and

''(3) enters into the contract or arrangement with the intent to deceptively affect reported revenues, trading volumes, or prices.''.

SEC. 303. ENFORCEMENT.

(a) COMPLAINTS.—Section 306 of the Federal Power Act (16 U.S.C. 825e) is amended by—

(1) inserting ''electric utility,'' after ''Any person,''; and

(2) inserting ''transmitting utility,'' after ''license'' each place it appears.

(b) INVESTIGATIONS—Section 307(a) of the Federal Power Act (16 U.S.C. 825f((a)) is amended by inserting ''or transmitting utility'' after ''any person'' in the first sentence.

(c) REVIEW OF COMMISSION ORDERS.—Section 313(a) of the Federal Power Act (16 U.S.C. 8251) is amended by inserting ''electric utility,'' after ''Any person,'' in the first sentence.

(d) CRIMINAL PENALTIES—Section 316 of the Federal Power Act (16 U.S.C. 825o) is amended—

(1) in subsection (a), by striking ''$5,000'' and inserting ''$1,000,000'', and by striking ''two years'' and inserting ''five years'';

(2) in subsection (b), by striking ''$500'' and inserting ''$25,000''; and

(3) by striking subsection (c).

(e) CIVIL PENALTIES.—Section 316A of the Federal Power Act (16 U.S.C. 825o–1 is amended—

(1) in subsections (a) and (b), by striking ''section 211, 212, 213, or 214'' each place it appears and inserting ''Part II''; and

(2) in subsection (b), by striking ''$10,000'' and inserting ''$1,000,000''.

SUBTITLE B—REFUND EFFECTIVE DATE

SEC. 304. REFUND EFFECTIVE DATE.

Section 206(b) of the Federal Power Act (16 U.S.C. 824e(b)) is amended by—

(1) striking ''the date 60 days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period'' in the second sentence and inserting ''the date of the filing of such complaint nor later than 5 months after the filing of such complaint'';

(2) striking ''60 days after'' in the third sentence and inserting ''of'';

(3) striking ''expiration of such 60-day period'' in the third sentence and inserting ''publication date''; and

(4) striking the fifth sentence and inserting in lieu thereof; ''If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision.''.

By Mr. FEINGOLD (for himself, Mr. LEAHY, and Mr. DAYTON):

S. 477. A bill to amend the Internal Revenue Code of 1986 to disallow deductions and credits for companies who discriminate against Canadian pharmacies that pass along discounts to consumers living in the United States; to the Committee on Finance.

Mr. FEINGOLD. Mr. President, I rise today to introduce legislation on behalf of Wisconsin's seniors and taxpayers whose wallets are being gauged by certain pharmaceutical companies. My legislation is in response to certain pharmaceutical companies' decision to target seniors who are crossing into Canada to get more affordable prescription drugs for their own use.

If these pharmaceutical companies are going to price gauge seniors's wallets, they don't deserve the taxpayers' support.

A growing number of American seniors are obtaining their prescription drugs from Canada for personal use.

Unfortunately, many of these seniors who are crossing the boarder to access more affordable prescription drugs for their personal use are being targeted by the very pharmaceutical companies that receive millions in tax breaks.

I recently received a call from seniors in my state that Glaxo Smith Klein had decided to stop supplying Canadian pharmacies that resell its drugs to Americans, thereby preventing them from receiving the same benefits these pharmacies provide to Canadians.

The Seniors in my State were not the only ones who took notice of this action. On February 21st of this month, Seniors groups from 12 States, including Wisconsin, sent Glaxo a message by launching a boycott of nonprescription products of Glaxo-Smith-Kline.

Congress should also send all pharmaceutical companies a message that this practice simply is unacceptable.

I think the single most important step we can take is to modernize Medicare and make it better is to eliminate the current inequities in the Medicare system and provide the prescription drug coverage senior citizens need.

At the same time Congress should pass legislation, that Senators SCHUMER, MCCAIN, and I introduced that would bring lower-cost generic drugs to the market faster and lower the cost of prescription drugs by $60 billion.

Until we pass a comprehensive prescription drug benefit, we must ensure that seniors are not targeted by pharmaceutical companies. If these drug companies actively discriminate against American seniors, we should not provide them tax breaks.

That's why my legislation would deny tax breaks to drug companies who discriminate against Canadian pharmacies that provide Americans the same discount that they provide to Canadians.

I urge my colleagues to join me in cosponsoring this legislation.

By Mr. SARBANES (for himself, Mr. WARNER, Mrs. MURRAY, Mr. CAMPBELL, Mrs. HUTCHISON, Mrs. CLINTON, Mr. SESSIONS, and Mr. MILLER):

S. 478. A bill to grant a Federal charter Korean War Veterans Association, Incorporated, and for other purposes; to the Committee on the Judiciary.

Mr. SARBANES. Mr. President, today I am once again introducing legislation together with Senators WARNER, CAMPBELL, MURRAY, CLINTON, SESSIONS, HUTCHISON and MILLER which would grant a Federal Charter to the Korean War Veterans Association, Incorporated. This legislation, which has passed the Senate in the past two Congresses, recognizes and honors the 5.7 million Americans who fought and served during the Korean War for their struggles and sacrifices on behalf of freedom and the principles and ideals of our nation.

For the past three years, under the direction of Public Law 105–85, we have been marking the 50th Anniversary of the events of the Korean War—beginning with the events of June 1950 when the North Korea People's Army swept across the 38th Parallel to occupy Seoul, South Korea. Members of our Armed Forces—including many from the State of Maryland—immediately answered the call of the U.N. to repel this forceful invasion. Without hesitation, these soldiers traveled to an unfamiliar corner of the world to join an unprecedented multi-national force comprised of 22 countries and risked their lives to protect freedom. The Americans who led this international effort were true patriots who fought with remarkable courage.

In battles such as Pork Chop Hill, the Inchon Landing and the frozen Chosin Reservoir, which was fought in temperatures as low as fifty-seven degrees below zero, they faced some of the most brutal combat in history. This year, on July 27, we will commemorate the 50th Anniversary of the signing of the Military Armistice Agreement which officially ended armed hostilities. By the time the fighting had ended, 8,177 Americans were listed as missing or prisoners of war—some of whom are still missing—and over 36,000 Americans had died. One hundred and thirty-one Korean War Veterans were awarded the nation's highest commendation for combat bravery, the Medal of Honor. Ninety-four of these soldiers gave their lives in the process.

There is an engraving on the Korean War Veterans Memorial which reflects these losses and how brutal a war this was. It reads, ''Freedom is not Free.'' Yet, as a Nation, we have done little more than establish this memorial to publicly acknowledge the bravery of those who fought in the Korean War. The Korean War has been termed by many as the ''Forgotten War.'' Freedom is not free. We owe our Korean War Veterans a debt of gratitude. Granting this Federal charter—at no cost to the government—is a small expression of appreciation that we as a Nation can offer to these men and women, one which will enable them to work as a unified front to ensure that the ''Forgotten War'' is forgotten no more.

The Korean War Veterans Association was originally incorporated on June 25, 1985. Since its first annual reunion and memorial service in Arlington, Virginia, where its members decided to develop a national focus and strong commitment to service, the association has grown substantially to a membership of approximately 19,000. A Federal charter would allow the Association to continue and grow its mission and further its charitable and benevolent causes. Specifically, it will afford the Korean War Veterans' Association the same status as other major veterans organizations and allow it to participate as part of select committees with other congressionally chartered veterans and military groups. A Federal charter will also accelerate the Association's ''accreditation'' with the Department of Veterans Affairs which will enable its members to assist in processing veterans' claims.

The Korean War Veterans have asked for very little in return for their service and sacrifice. I urge my colleagues to join me in supporting this legislation and ask that the text of the measure be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 478

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. GRANT OF FEDERAL CHARTER TO KOREAN WAR VETERANS ASSOCIATION, INCORPORATED.

(a) GRANT OF CHARTER.—Part B of subtitle II of title 36, United States Code, is amended—

(1) by striking the following:

''CHAPTER 1201—[RESERVED]''; and

(2) by inserting the following:

''CHAPTER 1201—KOREAN WAR VETERANS ASSOCIATION, INCORPORATED

''Sec.

''120101. Organization.

''§ 120101. Organization

''(a) FEDERAL CHARTER.—Korean War Veterans Association, Incorporated (in this chapter, the 'corporation'), incorporated in the State of New York, is a federally chartered corporation.

''(b) EXPIRATION OF CHARTER.—If the corporation does not comply with the provisions of this chapter, the charter granted by subsection (a) expires.

''§ 120102. Purposes

''The purposes of the corporation are as provided in its articles of incorporation and include—

''(1) organizing, promoting, and maintaining for benevolent and charitable purposes an association of persons who have seen honorable service in the Armed Forces during the Korean War, and of certain other persons;

''(2) providing a means of contact and communication among members of the corporation;

''(3) promoting the establishment of, and establishing, war and other memorials commemorative of persons who served in the Armed Forces during the Korean War; and

''(4) aiding needy members of the corporation, their wives and children, and the widows and children of persons who were members of the corporation at the time of their death.

''§ 120103. Membership

''Eligibility for membership in the corporation, and the rights and privileges of members of the corporation, are as provided in the bylaws of the corporation.

''§ 120104. Governing body

''(a) BOARD OF DIRECTORS.—The board of directors of the corporation, and the responsibilities of the board of directors, are as provided in the articles of incorporation of the corporation.

''(b) OFFICERS.—The officers of the corporation, and the election of the officers of the corporation, are as provided in the articles of incorporation.

''§ 120105. Powers

''The corporation has only the powers provided in its bylaws and articles of incorporation filed in each State in which it is incorporated.

''§ 120106. Restrictions

''(a) STOCK AND DIVIDENDS.—The corporation may not issue stock or declare or pay a dividend.

''(b) POLITICAL ACTIVITIES.—The corporation, or a director or officer of the corporation as such, may not contribute to, support, or participate in any political activity or in any manner attempt to influence legislation.

''(c) LOAN.—The corporation may not make a loan to a director, officer, or employee of the corporation.

''(d) CLAIM OF GOVERNMENTAL APPROVAL OR AUTHORITY.—The corporation may not claim congressional approval, or the authority of the United States, for any of its activities.

''§ 120107. Duty to maintain corporate and tax-exempt status

''(a) CORPORATE STATUS.—The corporation shall maintain its status as a corporation incorporated under the laws of the State of New York.

''(b) TAX-EXEMPT STATUS.—The corporation shall maintain its status as an organization exempt from taxation under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

''§ 120108. Records and inspection

''(a) RECORDS.—The corporation shall keep—

''(1) correct and complete records of account;

''(2) minutes of the proceedings of its members, board of directors, and committees having any of the authority of its board of directors; and

''(3) at its principal office, a record of the names and addresses of its members entitled to vote on matters relating to the corporation.

''(b) INSPECTION.—A member entitled to vote on matters relating to the corporation, or an agent or attorney of the member, may inspect the records of the corporation for any proper purpose, at any reasonable time.

''§ 120109. Service of process

''The corporation shall have a designated agent in the District of Columbia to receive service of process for the corporation. Notice to or service on the agent is notice to or service on the Corporation.

''§ 120110. Liability for acts of officers and agents

''The corporation is liable for the acts of its officers and agents acting within the scope of their authority.

''§ 120111. Annual report

''The corporation shall submit an annual report to Congress on the activities of the corporation during the preceding fiscal year. The report shall be submitted at the same time as the report of the audit required by section 10101 of this title. The report may not be printed as a public document.''.

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle II of title 36, United States Code, is amended by striking the item relating to chapter 1201 and inserting the following new item:

''1201. Korean War Veterans Association, Incorporated .....120101''.

By Mr. EDWARDS:

S. 479. A bill to amend title IV of the Higher Education Act of 1965 to provide grants for homeland security scholarships; to the Committee on Health, Education, Labor, and Pensions.

Mr. EDWARDS. Mr. President, I rise today to introduce the Protect America Scholarships Act of 2003. The Act will draw talented young people into professions that are vital to America's security and that are critically short of expertise. It offers college students a simple deal: If you'll serve for five years, we'll pay for your college.

The reason for this law is simple. Our country continues to have tremendous homeland security needs. We have thousands of important jobs that we aren't filling because we don't have the qualified people. And we have thousands of young people who are looking to serve their country, and who are also looking for ways to pay for college.

So this bill puts together the needs of our country and the idealism of our young people. It says that young people who commit to meeting priority homeland security needs will get money for college in return.

Let me give three examples of professions where this bill can make a real difference.

First, our public health system suffers from a shortage of trained professionals who can contribute to the fight against terrorism. Too few medical professionals are trained to diagnose and treat diseases caused by biological agents. Public health laboratories don't have the capacity to test all the specimens suspected of being biological agents. Local governments need as many as 15,000 new public health preparedness employees. And despite the central role of nurses in responding should terrorists attack with chemical or biological weapons, there are more than 126,000 unfilled nursing positions today. There are special roles in all of these professions that trained young people could fill in important ways.

Second, the federal government faces a critical shortage of policymakers and intelligence analysts with expertise in foreign languages and cultures. The General Accounting Office has reported that the FBI's efforts to combat terrorism have been impeded by a lack of qualified translators. Thousands of hours of audiotapes and pages of written material have not been reviewed or translated. Similarly, the U.S. Department of State reports that lack of language fluency has weakened its fight against international terrorism and drug trafficking.

A third area where we need more people is fighting cyberterrorism. We now live in a world where a terrorist can do as much damage with a keyboard and a modem as with a gun or a bomb. By exploiting computer vulnerabilities, terrorists might be able to shut down power for entire cities for extended periods; disrupt our phones; poison our water; erase financial records; paralyze our police, firefighters, and ambulances; and stop all traffic on the Internet. Yet our workforce specializing in cybersecurity remains inadequate. The federal government has especially serious shortages. These vulnerabilities leave our Federal agencies exposed to hackers, system shutdowns, and cyberterrorists.

By offering up to $10,000 in college tuition, the Protect America Scholarships Act will harness the patriotism and determination of a new generation of Americans to urgent national priorities. The federal government and a growing number of states, including North Carolina, use similar programs to recruit teachers successfully. The recent Hart-Rudman report identified student loan debt burdens as a particular obstacle to attracting young adults into public service.

The safety of the American people depends on the millions of people working to protect them. Today's bill will help recruit more talented Americans to professions needed to defend our nation. I hope it will earn the support of my colleagues.

I request unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 479

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Protect America Scholarships Act of 2003''.

SEC. 2. GRANTS AUTHORIZED.

Part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) is amended by adding at the end the following:

''Subpart 9—Homeland Security Scholarships

''SEC. 420K. PURPOSES.

''The purposes of this subpart are—

''(1) to recruit talented young people to professions that are needed to ensure the Nation's homeland security; and

''(2) to make college education more affordable.

''SEC. 420L. DEFINITIONS.

''In this subpart:

''(1) ELIGIBLE ENTITY.—The term 'eligible entity' means a partnership between—

''(A) an institution of higher education (or consortium of such institutions); and

''(B) a qualified employer (or consortium of such employers).

''(2) ELIGIBLE STUDENT.—The term 'eligible student' means an individual who—

''(A)(i) is enrolled as a full- or part-time student at an institution of higher education with a qualified academic major or program; or

''(ii) has been accepted for enrollment at an institution of higher education and intends to major in a qualified academic major or program;

''(B) submits an application for a scholarship under this subpart; and

''(C) submits a written contract, prior to receiving assistance, accepting payment of a scholarship in exchange for providing qualified service.

''(3) QUALIFIED ACADEMIC MAJOR OR PROGRAM.—

''(A) IN GENERAL.—The term 'qualified academic major or program' means an academic major or program of study designated by the Secretary for each State in an annual notice in the Federal Register that—

''(i) prepares students in such majors or programs for a career that—

''(I) is primarily related to homeland security;

''(II) requires specialized expertise; and

''(III) suffers from a critical shortage of qualified personnel; and

''(ii) is a—

''(I) national priority, as determined by the Secretary in consultation with the Secretary of Homeland Security; or

''(II) State priority, as determined by the chief executive officer in the State in which the student seeking a scholarship under this subpart—

''(aa) graduated from secondary school; or

''(bb) is enrolled at an institution of higher education.

''(B) CONTINUATION OF QUALIFICATION.—An academic major or program of study designated by the Secretary under subparagraph (A) shall continue to be considered a qualified academic major or program for a student if such academic major or program of study was a qualified academic major or program at the time such student commenced study of such major or program of study.

''(4) QUALIFIED EMPLOYER.—The term 'qualified employer' means—

''(A) a nonprofit organization; or

''(B) a public agency.

''(5) QUALIFIED SERVICE.—

''(A) IN GENERAL.—The term 'qualified service' means full-time employment with the qualified employer of the eligible entity that awarded the eligible student a scholarship or with another qualified employer (consistent with the guidelines issued by the Secretary pursuant to subparagraph (B)), for a period of 2 years for the first year of a scholarship award and an additional 1 year for each additional year of a scholarship award, in a position that—

''(i) is primarily related to homeland security;

''(ii) requires specialized expertise related to the qualified academic major or program of the eligible student; and

''(iii) suffers from a critical lack of qualified personnel.

''(B) SERVICE WITH DIFFERENT EMPLOYER.—The Secretary shall issue guidelines describing when employment may be completed with a qualified employer who is not the qualified employer of the eligible entity that awarded the eligible student a scholarship.

''SEC. 420M. GRANTS TO ELIGIBLE ENTITIES.

''(a) IN GENERAL.—From funds appropriated under section 420O, the Secretary shall award grants, on a competitive basis, to eligible entities to enable the entities to award scholarships to eligible students in exchange for qualified service from such students.

''(b) APPLICATION.—An eligible entity that desires to receive a grant under this subpart shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(c) USE OF GRANT FUNDS.—

''(1) SCHOLARSHIP AWARDS.—An eligible entity that receives a grant under this subpart shall award scholarships to eligible students in exchange for qualified service from such students.

''(2) APPLICATION FORM.—An eligible entity that receives a grant under this subpart shall create an application form for a student desiring to receive a scholarship under this subpart, and include in such form a summary of the rights and liabilities of a student whose application is approved (and whose contract is accepted) by the eligible entity.

''(3) CONTRACT.—

''(A) IN GENERAL.—An eligible entity that receives a grant under this subpart shall prepare a written contract that shall be provided to a student desiring to receive a scholarship under this subpart at the time that an application is provided to such student.

''(B) CONTENT.—The contract described in subparagraph (A) shall be an agreement between the eligible entity and student that states that, subject to subparagraph (C)—

''(i) the eligible entity agrees to provide the student with a scholarship, that may be renewed in each year of study at the institution of higher education for a total of not more than 4 years; and

''(ii) the student agrees to—

''(I)(aa) accept provision of such a scholarship to the student;

''(bb) maintain enrollment in the qualified academic major or program until the student completes the course of study at the institution of higher education;

''(cc) while enrolled in such qualified academic major or program, maintain an acceptable level of academic standing (as determined by the institution of higher education); and

''(dd) provide qualified service; and

''(II) repay the scholarship under the terms of this subpart if the student fails to comply with the requirements of subclause (I).

''(C) LIMITATION.—The contract described in subparagraph (A) shall contain a provision that any financial obligation of the United States arising out of a contract entered into under this subpart and any obligation of the student which is conditioned thereon, is contingent upon funds being appropriated for scholarships under this subpart.

''(4) INFORMATION ON SCHOLARSHIP RECIPIENTS.—An eligible entity that receives a grant under this subpart shall submit a report to the Secretary at the time a scholarship award is provided to an eligible student identifying—

''(A) such student's name, date of birth, and social security number; and

''(B) the amount of such scholarship.

''(d) MATCHING FUNDS.—An eligible entity receiving Federal assistance under this subpart shall contribute non-Federal matching funds in an amount equal to 50 percent of the amount of Federal assistance.

''(e) DURATION OF GRANT.—Grants awarded under this subpart shall be for a term of 5 years.

''SEC. 420N. SCHOLARSHIPS.

''(a) SUBMISSION OF APPLICATION AND WRITTEN CONTRACT.—A student that desires to receive a scholarship under this subpart shall submit an application and written contract to an eligible entity at such time, in such manner, and containing such information as the eligible entity may require.

''(b) PAYMENT.—

''(1) IN GENERAL.—Subject to paragraph (2), a scholarship provided to an eligible student under this subpart for a school year shall consist of payment to, or (in accordance with paragraph (3)) on behalf of, the eligible student of the amount of the tuition and fees, described in section 472(1), of the eligible student in such school year.

''(2) MAXIMUM SCHOLARSHIP AMOUNT.—A scholarship awarded under this subpart during fiscal year 2004 shall not exceed $10,000. The Secretary shall determine the maximum scholarship amount for each succeeding fiscal year after adjusting for inflation.

''(3) CONTRACT.—The Secretary may contract with an institution of higher education, in which an eligible student is enrolled, for the payment to the institution of higher education of the amounts of tuition and fees described in paragraph (1).

''(c) VERIFICATION OF QUALIFIED SERVICE.—

''(1) DOCUMENTATION.——

''(A) FROM ELIGIBLE STUDENT.—An eligible student that receives a scholarship under this subpart shall submit documentation to the eligible entity that awarded the student the scholarship, under standards and procedures determined by the eligible entity, verifying that the student has completed such student's qualified service.

''(B) FROM ELIGIBLE ENTITY.—An eligible entity that receives a grant under this subpart shall submit documentation to the Secretary by a date specified by the Secretary and under standards and procedures determined by the Secretary, verifying that each eligible student awarded a scholarship under this subpart has completed such student's qualified service.

''(2) ROLE OF SECRETARY.—If the Secretary does not receive satisfactory documentation under paragraph (1)(B) by the date specified by the Secretary, then the Secretary shall collect the scholarship amount determined under paragraph (3) as a loan under the terms and conditions for repayment of loans under part B (including provisions under such part that provide for loan repayment over time).

''(3) BREACH OF AGREEMENT.—Subject to paragraph (4), if an eligible student receives a scholarship under this subpart and agrees to provide qualified service in consideration for receipt of the scholarship, the eligible student is liable to the Federal Government

for the amount of such award, for interest on such amount at the rate applicable at the time of noncompliance for Stafford loans under section 427A, and for reasonable collections costs, if the eligible student fails to submit the documentation required under paragraph (1)(A).

''(4) WAIVER OR SUSPENSION OF LIABILITY.—The Secretary shall waive liability under paragraph (3) if—

''(A) the student subsequently demonstrates that such student has provided qualified service;

''(B) the student suffers death or permanent and total disability;

''(C) the student is unable to complete the program in which such student was enrolled due to the closure of the institution of higher education; or

''(D) the Secretary determines that compliance by the student with the agreement involved is impossible or would involve extreme hardship to such student.

''(5) AMOUNTS TO REMAIN AVAILABLE.—Any amounts collected by the Secretary under this subsection shall remain available for grant awards under this subpart.

''(d) TAX-FREE.—The amount of any scholarship that is received under this subpart shall not, consistent with section 108(f) of the Internal Revenue Code of 1986, be treated as gross income for Federal income tax purposes.

''SEC. 420O. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this subpart—

''(1) $50,000,000 for fiscal year 2004;

''(2) $100,000,000 for fiscal year 2005;

''(3) $150,000,000 for fiscal year 2006; and

''(4) such sums as may be necessary for each of fiscal years 2007 and 2008.''.

By Mr. HARKIN (for himself, Mr. GRASSLEY, Mr. KENNEDY, Mr. COCHRAN, Mrs. LINCOLN, Mr. KERRY, Mr. BINGAMAN, Mr. DODD, Mr. BAUCUS, and Mr. EDWARDS):

S. 480. A bill to provide competitive grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. HARKIN. Mr. President, today I am introducing legislation, the Training for Realtime Writers Act of 2003, on behalf of myself and my colleagues, Senators GRASSLEY, KENNEDY, COCHRAN, LINCOLN, KERRY, BINGAMAN, DODD, and BAUCUS. The 1996 Telecom Act required that all television broadcasts were to be captioned by 2006. This was a much needed reform that has helped millions of deaf and hard-of-hearing Americans to be able to take full advantage of television programing. As of today, it is estimated that 3,000 captioners will be needed to fulfill this requirement, and that number continues to increase as more and more broadband stations come online. Unfortunately, the United States only has 300 captioners. If our country expects to have media fully captioned by 2006, something must be done.

This is an issue that I feel very strongly about because my late brother, Frank, was deaf. I know personally that access to culture, news, and other media was important to him and to others in achieving a better quality of life. More than 28 million Americans, or 8 percent of the population, are considered deaf or hard of hearing and many requires captioning services to participate in mainstream activities. In 1990, I authored legislation that required all television sets to be equipped with a computer chip to decode closed captioning. This bill completes the promise of that technology, affording deaf and hard of hearing Americans the same equality and access that captioning provides.

Though we don't necessarily think about it, on the morning of September 11 was a perfect example of the need for captioners. Holli Miller of Ankeny, IA, was captioning for Fox News. She was supposed to do her three and a half hour shift ending at 8:00 a.m. but as we all know, disaster struck. Despite the fact that she had already worked most of her shift and had two small children to care for, Holli Miller stayed right where she was and for nearly five more hours and continued to caption. Without even the ability to take bathroom breaks, Holli Miller made sure that deaf and hard of hearing people got the same news the rest of us got on September 11. I want to personnally say thank you to Holli Miller and all the many captioners and other people across the country that made sure all Americans were alert and informed on that tragic day.

But let me emphasize that the deaf and hard of hearing population is only one of a number of groups that will benefit from the legislation. The audience for captioning also includes individuals seeking to acquire or improve literacy skills, including approximately 27 million functionally illiterate adults, 3 to 4 million immigrants learning English as a second language, and 18 million children learning to read in grades kindergarten through 3. In addition, I see people using closed captioning to stay informed everywhere—from the gym to the airport. Captioning helps people educate themselves and helps all of us stay informed and entertained when audio isn't the most appropriate medium.

Although we have a few years to go until the deadline given by the 1996 Telecom Act, our nation is facing a serious shortage of captioners. Over the past five years, student enrollment in programs that train court reporters to become realtime writers has decreased significantly, causing such programs to close on many campuses. Yet the need for these skills continues to rise. That is why my colleagues and I are introducing this vital piece of legislation. The Training for Realtime Writers Act of 2003 would establish competitive grants to be used toward training real time captioners. This is necessary to ensure that we meet our goal set by the 1996 Telecom Act.

I urge my colleagues to review this legislation and I hope they will join us in support and join us in our effort to win its passage. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 480

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Training for Realtime Writers Act of 2003''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) As directed by Congress in section 723 of the Communications Act of 1934 (47 U.S.C. 613), as added by section 305 of the Telecommunications Act of 1996 (Public Law 104–104; 110 Stat. 126), the Federal Communications Commission adopted rules requiring closed captioning of most television programming, which gradually require new video programming to be fully captioned beginning in 2006.

(2) More than 28,000,000 Americans, or 8 percent of the population, are considered deaf or hard of hearing, and many require captioning services to participate in mainstream activities.

(3) More than 24,000 children are born in the United States each year with some form of hearing loss.

(4) According to the Department of Health and Human Services and a study done by the National Council on Aging—

(A) 25 percent of Americans over 65 years old are hearing impaired;

(B) 33 percent of Americans over 70 years old are hearing impaired; and

(C) 41 percent of Americans over 75 years old are hearing impaired.

(5) The National Council on Aging study also found that depression in older adults may be directly related to hearing loss and disconnection with the spoken word.

(6) Empirical research demonstrates that captions improve the performance of individuals learning to read English and, according to numerous Federal agency statistics, could benefit—

(A) 3,700,000 remedial readers;

(B) 12,000,000 young children learning to read;

(C) 27,000,000 illiterate adults; and

(D) 30,000,000 people for whom English is a second language.

(7) Over the past 5 years, student enrollment in programs that train court reporters to become realtime writers has decreased significantly, causing such programs to close on many campuses.

SEC. 3. AUTHORIZATION OF GRANT PROGRAM TO PROMOTE TRAINING AND JOB PLACEMENT OF REALTIME WRITERS.

(a) IN GENERAL.—The National Telecommunications and Information Administration shall make competitive grants to eligible entities under subsection (b) to promote training and placement of individuals, including individuals who have completed a court reporting training program, as realtime writers in order to meet the requirements for closed captioning of video programming set forth in section 723 of the Communications Act of 1934 (47 U.S.C. 613) and the rules prescribed thereunder.

(b) ELIGIBLE ENTITIES.—For purposes of this Act, an eligible entity is a court reporting program that—

(1) can document and demonstrate to the Secretary of Commerce that it meets minimum standards of educational and financial accountability, with a curriculum capable of training realtime writers qualified to provide captioning services;

(2) is accredited by an accrediting agency recognized by the Department of Education; and

(3) is participating in student aid programs under title IV of the Higher Education Act of 1965.

(c) PRIORITY IN GRANTS.—In determining whether to make grants under this section, the Secretary of Commerce shall give a priority to eligible entities that, as determined by the Secretary of Commerce—

(1) possess the most substantial capability to increase their capacity to train realtime writers;

(2) demonstrate the most promising collaboration with local educational institutions, businesses, labor organizations, or other community groups having the potential to train or provide job placement assistance to realtime writers; or

(3) propose the most promising and innovative approaches for initiating or expanding training and job placement assistance efforts with respect to realtime writers.

(d) DURATION OF GRANT.—A grant under this section shall be for a period of two years.

(e) MAXIMUM AMOUNT OF GRANT.—The amount of a grant provided under subsection (a) to an entity eligible may not exceed $1,500,000 for the two-year period of the grant under subsection (d).

SEC. 4. APPLICATION.

(a) IN GENERAL.—To receive a grant under section 3, an eligible entity shall submit an application to the National Telecommunications and Information Administration at such time and in such manner as the Administration may require. The application shall contain the information set forth under subsection (b).

(b) INFORMATION.—Information in the application of an eligible entity under subsection (a) for a grant under section 3 shall include the following:

(1) A description of the training and assistance to be funded using the grant amount, including how such training and assistance will increase the number of realtime writers.

(2) A description of performance measures to be utilized to evaluate the progress of individuals receiving such training and assistance in matters relating to enrollment, completion of training, and job placement and retention.

(3) A description of the manner in which the eligible entity will ensure that recipients of scholarships, if any, funded by the grant will be employed and retained as realtime writers.

(4) A description of the manner in which the eligible entity intends to continue providing the training and assistance to be funded by the grant after the end of the grant period, including any partnerships or arrangements established for that purpose.

(5) A description of how the eligible entity will work with local workforce investment boards to ensure that training and assistance to be funded with the grant will further local workforce goals, including the creation of educational opportunities for individuals who are from economically disadvantaged backgrounds or are displaced workers.

(6) Additional information, if any, of the eligibility of the eligible entity for priority in the making of grants under section 3(c).

(7) Such other information as the Administration may require.

SEC. 5. USE OF FUNDS.

(a) IN GENERAL.—An eligible entity receiving a grant under section 3 shall use the grant amount for purposes relating to the recruitment, training and assistance, and job placement of individuals, including individuals who have completed a court reporting training program, as realtime writers, including—

(1) recruitment;

(2) subject to subsection (b), the provision of scholarships;

(3) distance learning;

(4) development of curriculum to more effectively train realtime writing skills, and education in the knowledge necessary for the delivery of high-quality closed captioning services;

(5) assistance in job placement for upcoming and recent graduates with all types of captioning employers;

(6) encouragement of individuals with disabilities to pursue a career in realtime writing; and

(7) the employment and payment of personnel for such purposes.

(b) SCHOLARSHIPS.—

(1) AMOUNT.—The amount of a scholarship under subsection (a)(2) shall be based on the amount of need of the recipient of the scholarship for financial assistance, as determined in accordance with part F of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087kk).

(2) AGREEMENT.—Each recipient of a scholarship under subsection (a)(2) shall enter into an agreement with the National Telecommunications and Information Administration to provide realtime writing services for a period of time (as determined by the Administration) that is appropriate (as so determined) for the amount of the scholarship received.

(3) COURSEWORK AND EMPLOYMENT.—The Administration shall establish requirements for coursework and employment for recipients of scholarships under subsection (a)(2), including requirements for repayment of scholarship amounts in the event of failure to meet such requirements for coursework and employment. Requirements for repayment of scholarship amounts shall take into account the effect of economic conditions on the capacity of scholarship recipients to find work as realtime writers.

(c) ADMINISTRATIVE COSTS.—The recipient of a grant under section 3 may not use more than 5 percent of the grant amount to pay administrative costs associated with activities funded by the grant.

(d) SUPPLEMENT NOT SUPPLANT.—Grants amounts under this Act shall supplement and not supplant other Federal or non-Federal funds of the grant recipient for purposes of promoting the training and placement of individuals as realtime writers

SEC. 6. REPORTS.

(a) ANNUAL REPORTS.—Each eligible entity receiving a grant under section 3 shall submit to the National Telecommunications and Information Administration, at the end of each year of the grant period, a report on the activities of such entity with respect to the use of grant amounts during such year.

(b) REPORT INFORMATION.—

(1) IN GENERAL.—Each report of an entity for a year under subsection (a) shall include a description of the use of grant amounts by the entity during such year, including an assessment by the entity of the effectiveness of activities carried out using such funds in increasing the number of realtime writers. The assessment shall utilize the performance measures submitted by the entity in the application for the grant under section 4(b).

(2) FINAL REPORT.—The final report of an entity on a grant under subsection (a) shall include a description of the best practices identified by the entity as a result of the grant for increasing the number of individuals who are trained, employed, and retained in employment as realtime writers.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act, amounts as follows:

(1) $20,000,000 for each of fiscal years 2004, 2005, and 2006.

(2) Such sums as may be necessary for fiscal year 2007.

Mr. GRASSLEY. Mr. President, I am pleased to once again be the lead Republican cosponsor of the ''Training for Realtime Writers Act''. This legislation that Senator HARKIN and I are introducing today will provide grants for the training of realtime reporters and captioners. While we ran out of time to address this matter in the 107th Congress, I would remind Senators of the looming problem related to a shortage of what are called ''realtime writers''. Realtime writers are essentially trained court reporters, much like the Official Reporters of Debates here in the Senate, who use a combination of additional specialized training and technology to transform words into text as they are spoken. This can allow deaf and hard of hearing individuals to understand live television as well as follow proceedings at a civic function or in a classroom.

In the Telecommunications Act of 1996, Congress mandated that most television programming be fully captioned by 2006 in order to allow the 28 million Americans who are deaf or had of hearing to have access to the same news and information that many of us take for granted. Information provides a vital link to the outside world. Americans receive a large amount of their information about what is happening in the world and right in their communities from television. Whether it is an international crisis or a weather warning, information is necessary to fully participate in our society. In order for those who are deaf and hard of hearing to receive the same information as it is broadcast on live television, groups of captions must work around the clock transcribing words as they are spoken.

Currently, video-programming distributers must provide an average of at least 900 hours of captioned programming. Starting in 2005, this will increase to 1350 hours. By 2006, 100 percent of new nonexempt programming must be provided with captions. At the same time, student enrollment in programs that provide essential training in captioning has decreased significantly, with programs closing on many campuses. In order to meet the growing demand for realtime writers caused by this mandate, we must do everything we can to increase the number of individuals receiving this very specialized training.

Our bill will help address the shortage of individuals trained as realtime writers by providing grants to accredited court reporting programs to promote the training and placement of individuals as realtime writers. Specifically, court reporting programs could use these grants for item like recruitment of students for realtime writing programs, need-based scholarships, distance learning, education and training, job placement assistance, the encouragement of individuals with disabilities to pursue a career as a realtime writer, and personnel costs.

The expansion of distance learning opportunities in particular will have an enormous impact by making training accessible to individuals who want to become realtime writers but do not live in metropolitan areas. Also, need based scholarships offered using these grants funds would be subject to an agreement with the National Telecommunications and Information Administration to provide realtime writing services for a period of time.

We must act quickly because the shortage of individuals trained as realtime writers will only grow more severe as the captioning mandate in the 1996 Telecommunications Act continues to take effect. Failure to act could leave the 28 million deaf or hard of hearing Americans without the ability to fully participate in many of the professional, educational, and civic activities that other Americans enjoy. Congress was not able to complete work on this urgent matter before the end of the 107th Congress, so we must redouble our efforts. I would urge all senators to support the swift passage of this legislation.

By Mr. ALLEN (for himself and Mr. WARNER):

S. 481. A bill to amend chapter 84 of title 5, United States Code, to provide that certain Federal annuity computations are adjusted by 1 percentage point relating to periods of receiving disability payments, and for other purposes; to the Committee on Governmental Affairs.

Mr. ALLEN. Mr. President, I rise today to introduce a bill to fairly assist injured Federal employees. This legislation will adjust Federal employees retirement computations to offset reductions in their retirement arising from on-the-job injuries covered by the Workers Compensation program. I introduced similar legislation last session that was passed by the Senate. I would like to thank my colleague Senator WARNER the senior Senator from Virginia, for his valuable support in cosponsoring this important effort.

This bill addresses a problem in the retirement program for Federal employees that has been recognized but unresolved since 1986 when the current retirement system was established. Unfortunately, complications arising from the Tax Code and the Workers Rehabilitation Act of 1973 have blocked any solution.

My resolve to address this problem was inspired by Ms. Louise Kurtz, a Federal employee from Virginia who was severely injured in the September 11 attack on the pentagon. She suffered burns over 70 percent of her body and lost all of her fingers. She has had many painful surgeries and faces additional surgeries in the future. She continues to endure rehabilitation over a year after suffering her injuries, yet still hopes to return to work some day. Current law, however, does not allow Mrs. Kurtz to contribute to her retirement program while she is recuperating and receiving Workers' Compensation disability payments. As a result, after returning to work and eventually retiring, she will find herself inadequately prepared and unable to afford to retire because of the lack of contributions during her recuperation.

As Ms. Kurt's situation reveals, Federal employee under the Federal Employees Retirement System who have sustained an on-the-job injury and are receiving disability compensation from the Department of Labor's Office of Worker's Compensation Programs are unable to make contributions or payments into Social Security or the Thrift Savings Plan. Therefore, the future retirement benefits from both sources are reduced.

This legislation offsets the reductions in Social Security and Thrift savings Plan retirement benefits by increasing the Federal Employees Retirement System Direct Benefit calculation by one percentage point for extended periods of disability.

The passage of this bill ensures that the pensions of our hard-working federal employees will be kept whole during a period of injury and recuperations, especially now that many of them are on the frontlines of protecting our homeland security in this new war on terror. By protecting the retirement security of injured Federal employee, we have provided an incentive for them to return to work and increased our ability to retain our most dedicated and experienced Federal workers. This is a reasonable and fair approach in which the whole Senate acted in a logical and compassionate manner last fall. Let us do so again.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 481

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ANNUITY COMPUTATION ADJUSTMENT FOR PERIODS OF DISABILITY.

(a) IN GENERAL.—Section 8415 of title 5, United States Code, is amended—

(1) by redesignating the second subsection (i) as subsection (k); and

(2) by adding at the end the following:

''(l) In the case of any annuity computation under this section that includes, in the aggregate, at least 2 months of credit under section 8411(d) for any period while receiving benefits under subchapter I of chapter 81, the percentage otherwise applicable under this section for that period so credited shall be increased by 1 percentage point.''

(b) CONFORMING AMENDMENT.—Section 8422(d)(2) of title 5, United States Code (as added by section 122(b)(2) of Public Law 107–135), is amended by striking ''8415(i)'' and inserting ''8415(k)''.

(c) APPLICABILITY.—The amendments made by this section shall apply with respect to any annuity entitlement which is based on a separation from service occurring on or after the date of enactment of this Act.

By Ms. COLLINS:

S. 482. A bill to reauthorize and amend the Magnuson-Stevens Fishery Conservation and Management Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Ms. COLLINS (for herself and Ms. SNOWE):

S. 483. A bill to authorize the Secretary of the Army to carry out a project for the mitigation of shore damages attributable to the project for navigation, Saco River, Maine; to the Committee on Environment and Public Works.

Ms. COLLINS. Mr. President, I rise today to introduce two pieces of legislation that will improve the lives of our Nation's fishermen who are struggling to make a living on the sea.

Fishing is more than just a profession in New England. Fishing is a culture and a way of life. This way of life is being threatened, however, by excessive regulation and unnecessary litigation. Despite scientific evidence of a rebound in fish stocks, New England's fishermen are suffering under ever more burdensome restrictions. Everyday, I hear from fishermen who struggle to support their families because they have been deprived of their right to make an honest living on the seas. The ''working waterfronts'' of our communities are in danger if disappearing, likely to be replaced by development. When that happens, a part of Maine's heritage is lost forever.

Today, I am introducing a package of amendments to the Magnuson-Stevens Act that will deliver a resource management strategy that is balanced, responsive, and sensible. It recognizes the fishermen's strong commitment to conserving the stocks, and acknowledges fishermen as partners in fisheries management.

The Fisheries Science and Management Improvement Act of 2003 will address much needed improvements in the science and regulatory standards of fisheries management. The Nation's fisheries management system, as it is currently designed, is broken. If anyone doubts this is the case, I want to point out that more than 100 lawsuits are currently pending against the Department of Commerce involving fisheries management plans.

Litigation is no way to manage one of our Nation's most important ecological and economic resources. The fact is, the courts are simply not well-suited to making biological and regulatory decisions. Fisheries management is best left to those who know the subject best: the fishermen, scientists, and regulators working together cooperatively.

No one in the country knows this better than New England groundfishermen. Over the last two years, a court case has thrown New England's groundfishing industry into a crisis. The case ended when a Federal judge ordered severe restrictions on groundfishing, including a 20-percent

cut in Days-at-Sea. The effect of this court order has been simply catastrophic for New England's groundfishing industry—an industry made up of small, independently-owned, and often family-owned, businesses.

These severe restrictions were ordered despite the fact that the science clearly demonstrates that the biomass for New England groundfish has increased every year since 1996. If the biomass is increasing, and the stock is clearly rebuilding, it makes no sense to enforce an arbitrarily structured and unscientifically based timeframe on the rebuilding process. This is especially true when the survival of a culture is at stake.

My legislation would inject consistency and common-sense standards into the fisheries management process: it addresses the importance of solid and reliable science in fisheries management. It strengthens the definition of ''best scientific information available'' and requires scientific data, including all stock assessments, to be peer-reviewed and to include the consideration of anecdotal information gathered from the people who know fishing best—the fishermen themselves. My bill ensures that the process of rebuilding stocks is based on rational and comprehensive science. Under current law, when fisheries are classified as overfished, the Councils are required to implement rebuilding plans to attain a historic high level of abundance within ten years, regardless of whether or not the current state of the marine environment can sustain such an abundance level. My bill redefines the concept of ''overfishing'' to take into consideration natural fluctuations in the marine environment. It also eliminates the ten-year rebuilding requirement—a requirement that has no foundation in science—and requires rebuilding periods to take into consideration the biology of the fish stock and the economic impact on fishing communities.

The legislation also addresses problems with the current conception of Essential Fish Habitat. Currently, the entire Exclusive Economic Zone has been defined as Essential Fish Habitat instead of more discrete units of habitat as originally conceived. Further, current law allows the Councils to regulate the impacts of fishing activity on Essential Fish Habitat, while the Councils cannot regulate other commercial activities—such as mining and coastal development and the laying of telecommunications cables—that affect these areas. My bill focuses the management of these areas on ''Habitat Areas of Particular Concern''—more discrete units of fish habitat that are more consistent with the congressional intent behind the Essential Fish Habitat concept.

My proposal treats the fishing industry as a legitimate interest in fisheries management by acknowledging the important role that commercial fishing plays in food security and healthy food consumption. My bill also ensures that the cumulative economic and social impacts of fisheries management decisions are considered, rather than assessed in isolation from one another.

Finally, the legislation would reduce the litigation burden on the fisheries management system. My proposal ensures that fishery management plans are pre-determined to be compliant with NEPA requirements, thereby preventing NEPA law from being used in an incorrect way to regulate fisheries. It would still require fishery management plans to meet all the other conservation provisions, including those governing rebuilding of overfished stocks, set out in the law. The Nation's Councils have asked for this protection from lawsuits so they may resume their proper role as a regulatory body.

I want to acknowledge the important role that my colleagues Senators SNOWE and KERRY, Chair and Ranking Member of the Oceans and Fisheries Subcommittee, are playing in addressing the problems of Magnuson-Stevens. My hope is that my proposal will help propel a discussion in the upcoming months as their committee moves forward with their own ideas.

The second piece of legislation I am offering is the Commercial Fishermen Safety Act of 2003, a bill to help fishermen purchase the life-saving safety equipment they need to survive when disaster strikes. I am pleased to be joined by my good friend from Massachusetts, Senator KERRY, in introducing this legislation. Senator KERRY has been a leader in the effort to sustain our fisheries and to maintain the proud fishing tradition that exists in his state and throughout the country.

The release of the movie The Perfect Storm provided millions of Americans with a glimpse of the challenges and dangers associated with earning a living in the fishing industry. While based on a true story, the movie merely scratches the surface of what it is like to be a modern-day fisherman. Everyday, members of our fishing communities struggle to cope with the pressures of running a small business, complying with extensive regulations, and maintaining their vessels and equipment. Added to these challenges are the dangers associated with fishing, where disaster can strike in conditions that are far less extreme than those depicted by the movie.

Year-in and year-out, commercial fishing is among the nation's most dangerous occupations. According to data compiled by the Coast Guard and the Bureau of Labor Statistics, 536 fishermen have lost their lives at sea since 1994. In fact, with an annual fatality rate of about 150 deaths per 100,000 workers, fishing is 30 times more dangerous than the average occupation.

The year 2000 will always be remembered in Maine's fishing communities as a year marked by tragedy. All told, nine commercial fishermen lost their lives off the coast of Maine in the year 2000, exceeding the combined casualties of the three previous years.

Yet as tragic as the year was, it could have been worse. Heroic acts by the Coast Guard and other fishermen resulted in the rescue of 13 commercial fishermen off the coast of Maine in the year 2000. In most of these circumstances, these fishermen were returned to their families because they had access to safety equipment that made the difference between life and death.

Coast Guard regulations require all fishing vessels to carry safety equipment. The requirements vary depending on factors such as the size of the vessel, the temperature of the water, and the distance the vessel travels from shore to fish.

When an emergency arises, safety equipment is priceless. At all other times, the cost of purchasing or maintaining this equipment must compete with other expenses such as loan payments, fuel, wages, maintenance, and insurance. Meeting all of these obligations is made more difficult by a regulatory framework that uses measures such as trip limits, days at sea, and gear alterations to manage our marine resources.

The Commercial Fishermen Safety Act of 2003 lends a hand to fishermen attempting to prepare in case disaster strikes. My bill provides a tax credit equal to 75 percent of the amount paid by fishermen to purchase or maintain required safety equipment. The tax credit is capped at $1500. Items such as EPIRBs and immersion suits cost hundreds of dollars, while life rafts can reach into the thousands. The tax credit will make life-saving equipment more affordable for more fishermen, who currently face limited options under the federal tax code.

I believe these two bills will assist our Nation's fishermen as they struggle to make their living on the seas. Fishing is a legitimate profession that deserves to be treated with the common-sense and consistency that we treat other professions. The legislation I am introducing gives these communities the tools they need to safely make their living in a way that still protects the resource.

By Mr. LEAHY (for himself and Ms. SNOWE):

S. 484. A bill to amend the Clean Air Act to establish requirements concerning the operation of fossil fuel-fired electric utility stem generating units, commercial and industrial boiler units, solid waste incineration units, medical waste incinerators, hazardous waste combustors, chlor-alkali plants, and Portland cement plants to reduce emissions of mercury to the environment, and for other purposes; to the Committee on Environmental and Public Works.

Mr. LEAHY. Mr. President, the risks and health effects of mercury contamination continue to be serious and immediate. We have known about mercury pollution for many years. It remains one of, if not the last of, the

major toxic pollutants without a comprehensive plan to control its spread. We know where the sources contributing to mercury contamination are, we have a pretty good idea where it goes, and we definitely know what harm it causes to people and to wildlife. Yet, serious contamination continues. That is why I am reintroducing important legislation today to confront this problem directly.

The most serious threat of mercury pollution is to our children. Just this week, the Environmental Protection Agency finally released their report, ''American's Children and the Environment: Measures of Contaminants, Body Burdens and Illnesses.'' The report should alarm all of us. It highlights the neurological harm that can come to children exposed to elevated mercury levels while in the womb and during the first years of their lives. As more mercury is dumped into our environment, more children will be at risk. Today, according to the Centers for Disease Control, 1 in 12 women of childbearing age has mercury levels above the safe health threshold established by EPA.

Although the report comes nine months late, it does highlight a serious gap between the Administration's ''Clear Skies'' proposal and the Leahy/Snowe bill when it comes to reducing mercury levels. The only thing clear about the Administration's proposal is that it won't protect Vermont's children from the pollution spewing out of power plants in the Midwest. The Administration's Clear Skies proposal will actually relax current mercury emissions law.

Our bill will reduce mercury emission from coal-fired power plants by 90 percent. The Clear Skies proposal would only reduce emissions by 50 percent in the near future and 70 percent over the next 15 years. Not only does this fall far short of our proposal, but it also falls short of current law and the Administration's previous position. In 2001, EPA Administrator Christie Todd Whitman said the EPA had initiated strict ''maximum achievable control technology'' MACT, standards for oil- and coal-fired electric utility units as required under section 112 of the Clean Air Act. At that time, Whitman said that mercury reductions are ''necessary now, not decades from now.''

Administrator Whitman was right then and wrong now. With industry's vigorous opposition to tighter mercury controls and the Bush administration's record to date rolling back environmental legislation regulation, especially the Clean Air Act, I worry that more children will be put at risk as the Administration continues to delay the MACT standards and other policies. The delays and rollbacks make you ask whose interests the Administration is putting first—children, or the big powerplant companies?

I ask for unanimous consent that a summary of the bill be printed in the RECORD.

There being no objection, the summary of the bill was ordered to be printed in the RECORD, as follows:

SUMMARY OF THE OMNIBUS MERCURY EMISSIONS REDUCTION ACT OF 2003

WHAT WILL THE OMNIBUS MERCURY EMISSIONS REDUCTION ACT OF 2003 DO?

The Omnibus Mercury Emissions Reduction Act of 2003 mandates substantial reductions in mercury emissions from all major sources in the United States. It is the only comprehensive legislation to control mercury emissions from all major sources. It directs EPA to issue new standards for unregulated sources and to monitor and report on the progress of currently regulated sources. It sets an aggressive timetable for these reductions so that mercury emissions are reduced as soon as possible.

With these emissions reductions, the bill requires the safe disposal of mercury recovered from pollution control systems, so that the hazards of mercury are not merely transferred from one environmental medium to another. It requires annual public reporting—in both paper and electronic form—of facility-specific mercury emissions. It phases out mercury use in consumer products, requires product labeling, and mandates international cooperation. It supports research into the retirement of excess mercury, the handling of mercury waste, the effectiveness of fish consumption advisories, and the magnitude of previously uninventoried sources.

SECTION 3. MERCURY EMISSION STANDARDS FOR FOSSIL FUEL-FIRED ELECTRIC UTILITY STEAM GENERATING UNITS

The EPA's ''Mercury Study Report to Congress'' estimated 52 tons of mercury emissions per year from coal- and oil-fired electric utility steam generating units. More recently, an EPA inventory estimated 43 tons of mercury from coal-fired power plants. Collectively, these power plants constitute the largest source of mercury emissions in the United States. In December 2000, the EPA issued a positive determination to regulate these mercury emissions. But these rules will take years to write and implement, and there is already vigorous industry opposition. It is uncertain what form these rules will take or how long they may be delayed. This section requires EPA to set a ''maximum achievable control technology'' (MACT) standard for these emissions, such that nationwide emissions decrease by at least 90 percent.

SECTION 4. MERCURY EMISSION STANDARDS FOR COAL- AND OIL-FIRED COMMERCIAL AND INDUSTRIAL BOILER UNITS

The EPA's report on its study estimates that 29 tons of mercury emissions are released per year from coal- and oil-fired commercial and industrial boiler units. The EPA has not yet decided to regulate these emissions. This section requires EPA to set a MACT standard for these mercury emissions, such that nationwide emissions decrease by at least 90 percent.

SECTION 5. REDUCTION OF MERCURY EMISSIONS FROM SOLID WASTE INCINERATION UNITS

The EPA study estimates that 30 tons of mercury emissions are released each year from municipal waste combustors. These emissions result from the presence of mercury-containing items such as fluorescent lamps, fever thermometers, thermostats and switches, in municipal solid waste streams. In 1995 EPA promulgated final rules for these emissions, and these rules took effect in 2000. This section reaffirms those rules and requires stricter rules for units that do not comply. The most effective way to reduce mercury emissions from incinerators is to reduce the volume of mercury-containing items before they reach the incinerator. That is why this section also requires the separation of mercury-containing items from the waste stream, the labeling of mercury-containing items to facilitate this separation, and the phaseout of mercury in consumer products within three years, allowing for the possibility of exceptions for essential uses.

SECTION 6. MERCURY EMISSION STANDARDS FOR CHLOR-ALKALI PLANTS

The EPA study estimates that 7 tons of mercury emissions are released per year from chlor-alkali plants that use the mercury cell process to produce chlorine. EPA has not issued rules to regulate these emissions. This section requires each chlor-alkali plant that uses the mercury cell process to reduce its mercury emissions by 95 percent. The most effective way to meet this standard would be to switch to the more energy efficient membrane cell process, which many plants already use.

SECTION 7. MERCURY EMISSION STANDARDS FOR PORTLAND CEMENT PLANTS

The EPA study estimates that 5 tons of mercury emissions are released each year from Portland cement plants. In 1999 EPA promulgated final rules for emissions from cement plants, but these rules did not include mercury. This section requires each Portland cement plant to reduce its mercury emissions by 95 percent.

SECTION 8. REPORT ON IMPLEMENTATION OF MERCURY EMISSION STANDARDS FOR MEDICAL WASTE INCINERATORS

The EPA study estimates that 16 tons of mercury emissions are released per year from medical waste incinerators. In 1997 EPA issued final rules for emissions from hospital/medical/infectious waste incinerators. This section requires EPA to report on the success of these rules in reducing these mercury emissions.

SECTION 9. REPORT ON IMPLEMENTATION OF MERCURY EMISSION STANDARDS FOR HAZARDOUS WASTE COMBUSTORS

The EPA study estimates that 7 tons of mercury emissions are released each year form hazardous waste incinerators. In 1999 EPA promulgated final rules for these emissions. This section requires EPA to report on the success of these rules in reducing these mercury emissions.

SECTION 10. DEFENSE ACTIVITIES

This section requires the Department of Defense to report on its use of mercury, including the steps it is taking to reduce mercury emissions and to stabilize and recycle discarded mercury. This section also prohibits the Department of Defense from returning the nearly 5,000 tons of mercury in the National Defense Stockpile to the global market.

SECTION 11. INTERNATIONAL ACTIVITIES

This section directs EPA to work with Canada and Mexico to study mercury pollution in North America, including the sources of mercury pollution, the pathways of the pollution, and options for reducing the pollution.

SECTION 12. MERCURY RESEARCH

This section supports a variety of mercury research projects. First, it promotes accountability by mandating an interagency report on the effectiveness of this act in reducing mercury pollution. Second, it mandates an EPA study on mercury sedimentation trends in major bodies of water. Third, it directs EPA to evaluate and improve state-level mercury data and fish consumption advisories. Fourth, it mandates a National Academy of Sciences report on the reatirement of excess mercury, such as

stockpiled industrial mercury that is no longer needed due to plant closures or process changes. Fifth, it mandates an EPA study of mercury emissions from electric arc furnaces, a source not studied in the EPA's study report. Finally, it authorizes $2,000,000 for modernization and expansion of the Mercury Deposition Network, plus $10,000,000 over ten years for operational support of that network.

Ms. SNOWE. Mr. President, I rise today as the lead cosponsor of Senator LEAHY's Omnibus Mercury Reduction Act of 2003 to ask support for our continued efforts to dramatically reduce mercury pollution that has been shown to pose serious health risks, especially for pregnant women, and can cause irreversible nerve damage in young children.

This legislation responds to the Environmental Protection Agency's just released report on ''America's Children and the Environment: Measures of Contaminants, Body Burdens, and Illnesses'', which states that EPA remains concerned about children potentially exposed to mercury in the womb.

Mercury is among the least-controlled and most dangerous toxins threatening pregnant women and children from mercury exposure through the air and water in America today, and we need to continue the fight to pass a national approach to better control its use. Because mercury pollution knows no State borders, a national initiative is necessary to control it and better understand its health effects.

The Omnibus Mercury Emissions Reduction Act of 2003 would require the U.S. Environmental Protection Agency, EPA, to impose new restrictions on mercury emissions by utility power plants, coal and oil-fired commercial boilers, solid waste incinerators, and other sources of emissions. According to the EPA, an estimated 30 tons of mercury emissions per year come from municipal waste combustors because of the presence of mercury-containing items such as fluorescent lamps, fever thermometers, thermostats, and switches.

Our bill requires utility power plants and commercial boilers to reduce mercury emissions by 95 percent in five years, and requires the EPA to publish a list of mercury-containing items that need to be separated and removed from the waste streams that feed solid waste management facilities. The most effective way to reduce mercury emissions from incinerators is to reduce the volume of mercury-containing items before they reach the incinerator.

The bill would also expand research on the effects of mercury on sensitive subpopulations such as pregnant women and children, and it directs the EPA to work with the States to improve the quality and dissemination of State fish consumption advisories.

Even in Maine, where great efforts have been made to preserve clean air and water, mercury arrives as an unseen threat, carried in the air from hundreds of miles away and deposited in our lakes, rivers and coastal regions through rain and snowfall. This bill complements the steps Maine has taken to reduce mercury emissions, and by addressing what happens outside our borders, it also can ensure that Maine's actions will not be in vain.

Mercury is a dangerous toxin present in coal, which is burned to produce 65 percent of the nation's electricity, other fossil fuels, and various household and industrial products. When mercury is burned, fine particles are released and carried by precipitation back to earth, contaminating water bodies, fish, and wildlife, and ultimately posing a threat to humans. Nationwide, 39 States have issued warnings about eating certain fish in more than 50,000 bodies of water, up from 27 States in 1993.

While Maine ranks 49th among the least-polluting States in terms of mercury emissions, nearly all of its lakes are under health advisories due to airborne mercury pollution transported in air currents from other States. Because mercury is an element and cannot be destroyed, it cycles endlessly through the environment, necessitating control of the toxin at the source.

With the technology and resources available, we can and must find creative ways to substantially reduce mercury pollution, and this bill kicks that process into gear and will go a very long way toward removing this harmful toxin as a threat to human health and the environment.

In partnership with the Omnibus mercury bill, I am also a cosponsor of Senator JEFFORDS' Clean Power Act that calls for a 90 percent reduction of mercury from coal burning power plants by 2008. By 2009, the Jeffords bill also dramatically cuts aggregate power plant emissions of the three other major power plant pollutants: nitrogen oxides, NO_x, the primary cause of smog, by 71 percent from 2000 levels; sulfur dioxide, SO_2, that causes acid rain and respiratory disease, by 81 percent from 2000 levels; and carbon dioxide, CO_2, the greenhouse gas most directly linked to global climate variabilities, by 21 percent from 2000 levels. Of note, the NO_x, SO_2, and mercury reductions are set at levels that are known to be cost effective with available technology.

I hope to work with my colleagues in the 108th Congress to see that provisions in these two bills are fully debated and policy is passed to protect our environment and our population from the ravages of these major air pollutants. We must move forward for the health of the unborn, the American public and the entire planet.

By Mr. INHOFE (for himself and Mr. VOINOVICH) (by request):

S. 485. A bill to amend the Clean Air Act to reduce air pollution through expansion of cap and trade programs, to provide an alternative regulatory classification for units subject to the cap and trade program, and for other purposes; to the Committee on Environment and Public Works.

Mr. INHOFE. Mr. President, I hereby introduce, by request, the Clear Skies Initiative to reduce harmful air pollutants.

I am pleased that Senator VOINOVICH and I and our counterparts in the House have the opportunity to work with the President on one of his top legislative priorities. Clear Skies demonstrates the President's serious commitment to providing strong environmental protections for the American people. It is the most aggressive presidential initiative in history to reduce power plant emissions.

Clear Skies will build upon the remarkable environmental progress we've made over the last 30 years. Since passage of the Clean Air Act in 1970 the nation's gross domestic product has increased 160 percent, energy consumption has increased 45 percent, and population has increased 38 percent. At the same time we've reduced emissions by 29 percent.

President Bush understands that achieving positive environmental results and promoting economic growth are not incompatible goals. Moving beyond the confusing, command-and-control mandates of the past, Clear Skies cap-and-trade system harnesses the power of technology and innovation to bring about significant reductions in harmful pollutants.

I look forward to working with the Administration on crafting a sound bill. I believe Clear Skies represents a good starting point for moving forward with the legislative process.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 485

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Clear Skies Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. EMISSION REDUCTION PROGRAMS.

Title IV of the Clean Air Act (relating to acid deposition control) (42 U.S.C. 7651, et seq.) is amended to read as follows:

''TITLE IV—EMISSION REDUCTION PROGRAMS

''PART A—GENERAL PROVISIONS

''As used in this title—

''(1) The term 'affected EGU' shall have the meaning set forth in section 421, 431, 451, or 471, as appropriate.

''(2) The term 'affected facility' or 'affected source' means a facility or source that includes one or more affected units.

''(3) The term 'affected unit' means—

''(A) under this part, a unit that is subject to emission reduction requirements or limitations under part B, C, or D or, it applicable, under a specified part or subpart; or

''(B) under subpart 1 of part B or subpart 1 of part C, a unit that is subject to emission reduction requirements or limitations under that subpart.

''(4) The term 'allowance' means—

''(A) an authorization, by the Administrator under this title, to emit one ton of sulfur dioxide, one ton of nitrogen oxides, or one ounce of mercury; or

''(B) under subpart 1 of part B, an authorization by the Administrator under this title, to emit one ton of sulfur dioxide.

''(5)(A) The term 'baseline heat input' means, except under subpart 1 of part B and section 407, the average annual heat input used by a unit during the 3 years in which the unit had the highest heat input for the period 1998 through 2002.

''(B) Notwithstanding subparagraph (A), if a unit commenced or commences operation during the period 2001 through 2004, then 'baseline heat input' means the manufacturer's design heat input capacity for the unit multiplied by 80 percent for coal-fired units, 50 percent for boilers that are not coal-fired, 50 percent for combustion turbines other than simple cycle turbines, and 5 percent for simple cycle combustion turbines.

''(C) A unit's heat input for a year shall be the heat input—

''(i) required to be reported under section 405 for the unit, if the unit was required to report heat input during the year under that section;

''(ii) reported to the Energy Information Administration for the unit, if the unit was not required to report heat input under section 405;

''(iii) based on data for the unit reported to the State where the unit is located as required by State law, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration; or

''(iv) based on fuel use and fuel heat content data for the unit from fuel purchase or use records, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration and the State.

''(D) Not later than 3 months after the enactment of the Clear Skies Act of 2003, the Administrator shall promulgate regulations, without notice and opportunity for comment, specifying the format in which the information under subparagraphs (B)(ii) and (C)(ii), (iii), or (iv) shall be submitted. Not later than 9 months after the enactment of the Clear Skies Act of 2003, the owner or operator of any unit under subparagraph (B)(ii) or (C)(ii), (iii), or (iv) to which allowances may be allocated under section 424, 434, 454, or 474 shall submit to the Administrator such information. The Administrator is not required to allocate allowances under such sections to a unit for which the owner or operator fails to submit information in accordance with the regulations promulgated under this subparagraph.

''(6) The term 'clearing price' means the price at which allowances are sold at an auction conducted by the Administrator or, if allowances are sold at an auction conducted by the Administrator at more than one price, the lowest price at which allowances are sold at the auction.

''(7) The term 'coal' means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

''(8) The term 'coal-derived fuel' means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

''(9) The term 'coal-fired' with regard to a unit means, except under subpart 1 of part B, subpart 1 of part C, and sections 424 and 434, combusting coal or any coal-derived fuel alone or in combination with any mount of any other fuel in any year.

''(10) The term 'cogeneration unit' means, except under subpart 1 of part B and subpart 1 of part C, a unit that produces through the sequential use of energy:

''(A) electricity; and

''(B) useful thermal energy (such as heat or steam) for industrial, commercial, heating, or cooling purposes.

''(11) The term 'combustion turbine' means any combustion turbine that is not self-propelled. The term includes, but is not limited to, a simple cycle combustion turbine, a combined cycle combustion turbine and any duct burner or heat recovery device used to extract heat from the combustion turbine exhaust, and a regenerative combustion turbine. The term does not include a combined turbine in an integrated gasification combined cycle plant.

''(12) The term 'commence operation' with regard to a unit means start up the unit's combustion chamber.

''(13) The term 'compliance plan' means either—

''(A) a statement that the facility will comply with all applicable requirements under this title, or

''(B) under subpart 1 of part B or subpart 1 of part C, where applicable, a schedule and description of the method or methods for compliance and certification by the owner or operator that the facility is in compliance with the requirements of that subpart.

''(14) The term 'continuous emission monitoring system' (CEMS) means the equipment as required by section 405, used to sample, analyze, measure, and provide on a continuous basis a permanent record of emissions and flow (expressed in pounds per million British thermal units (lbs/mmBtu), pounds per hour (lbs/hr) or such other form as the Administrator may prescribe by regulations under section 405.

''(15) The term 'designated representative' means a responsible person or official authorized by the owner or operator of a unit and the facility that includes the unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances, and the submission of and compliance with permits, permit applications, and compliance plans.

''(16) The term 'duct burner' means a combustion device that uses the exhaust from a combustion turbine to burn fuel for heat recovery.

''(17) The term 'facility' means all buildings, structures, or installations located on one or more contiguous or adjacent properties under common control of the same person or persons.

''(18) The term 'fossil fuel' means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

''(19) The term 'fossil fuel-fired' with regard to a unit means combusting fossil fuel, alone or in combination with any amount of other fuel or material.

''(20) The term 'fuel oil' means a petroleum-based fuel, including diesel fuel or petroleum derivatives.

''(21) The term 'gas-fired' with regard to a unit means, except under subpart 1 of part B and subpart 1 of part C, combusting only natural gas or fuel oil, with natural gas comprising at lease 90 percent, and fuel oil comprising no more than 10 percent, of the unit's total heat input in any year.

''(22) The term 'gasify' means to convert carbon-containing material into a gas consisting primarily of carbon monoxide and hydrogen.

''(23) The term 'generator' means a device that produces electricity and, under subpart 1 of part B and subpart 1 of part C, that is reported as a generating unit pursuant to Department of Energy Form 860.

''(24) The term 'heat input' with regard to a specific period of time means the product (in mmBtu/time) of the gross calorific value of the fuel (in mmBtu/lb) and the fuel feed rate into a unit (in lb of fuel/time) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

''(25) The term 'integrated gasification combined cycle plant' means any combination of equipment used to gasify fossil fuels (with or without other material) and then burn the gas in a combined cycle combustion turbine.

''(26) The term 'oil-fired' with regard to a unit means, except under section 424 and 434, combusting fuel oil for more than 10 percent of the unit's total heat input, and combusting no coal or coal-derived fuel, in any year.

''(27) The term 'owner or operator' with regard to a unit or facility means, except for subpart 1 of part B and subpart 1 of part C, any person who owns, leases, operates, controls, or supervises the unit or the facility.

''(28) The term 'permitting authority' means the Administrator, or the State or local air pollution control agency, with an approved permitting program under title V of the Act.

''(29) The term 'potential electrical output' with regard to a generator means the nameplate capacity of the generator multiplied by 8,760 hours.

''(30) The term 'simple cycle combustion turbine' means a combustion turbine that does not extract heat from the combustion turbine exhaust gases.

''(31) The term 'source' means, except for sections 410, 481, and 482, all buildings, structures, or installations located on one or more contiguous or adjacent properties under common control of the same person or persons.

''(32) The term 'State' means—

''(A) one of the 48 contiguous States, Alaska, Hawaii, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands; or

''(B) under subpart 1 of part B and subpart 1 of part C, one of the 48 contiguous States or the District of Columbia.

''(33) The term 'unit' means—

''(A) a fossil fuel-fired boiler, combustion turbine, or integrated gasification combined cycle plan; or

''(B) under subpart 1 of part B and subpart 1 of part C, a fossil fuel-fired combustion device.

''(34) The term 'utility unit' shall have the meaning set forth in section 411.

''(35) The term 'year' means calendar year.

SEC. 403. ALLOWANCE SYSTEM.

''(a) ALLOCATIONS IN GENERAL.—

''(1) For the emission limitation programs under this title, the Administrator shall allocate annual allowances for an affected unit, to be held or distributed by the designated representative of the owner or operator in accordance with this title as follows—

''(A) sulfur dioxide allowances in an amount equal to the annual tonnage emission limitation calculated under section 413, 414, 415, or 416, except as otherwise specifically provided elsewhere in subpart 1 of part B, or in an amount calculated under section 424 or 434,

''(B) nitrogen oxides allowances in an amount calculated under section 454, and

''(C) mercury allowances in an amount calculated under section 474.

''(2) Notwithstanding any other provision of law to the contrary, the calculation of the allocation for any unit or facility, and the determination of any values used in such calculation, under sections 424, 434, 454, and 474 shall not be subject to judicial review.

''(3) Allowances shall be allocated by the Administrator without cost to the recipient, and shall be auctioned or sold by the Administrator, in accordance with this title.

''(b) ALLOWANCE TRANSFER SYSTEM.—Allowances allocated, auctioned, or sold by the Administrator under this title may be transferred among designated representatives of the owners or operators of affected facilities under this title and any other person, as provided by the allowance system regulations promulgated by the Administrator. With regard to sulfur dioxide allowances, the Administrator shall implement this subsection under 40 CFR part 73 (2002), amended as appropriate by the Administrator. With regard to nitrogen oxides allowances and mercury allowances, the Administrator shall implement this subsection by promulgating regulations not later than 24 months after the date of enactment of the Clear Skies Act of 2003. The regulations under this subsection shall establish the allowance system prescribed under this section, including, but not limited to, requirements for the allocation, transfer, and use of allowances under this title. Such regulations shall prohibit the use of any allowance prior to the calendar year for which the allowance was allocated or auctioned and shall provide, consistent with the purposes of this title, for the identification of unused allowances, and for such unused allowances to be carried forward and added to allowances allocated in subsequent years, except as otherwise provided in section 425. Such regulations shall provide, or shall be amended to provide, that transfers of allowances shall not be effective until certification of the transfer, signed by a responsible official of the transferor, is received and recorded by the Administrator.

''(c) ALLOWANCE TRACKING SYSTEM.—The Administrator shall promulgate regulations establishing a system for issuing, recording, and tracking allowances, which shall specify all necessary procedures and requirements for an orderly and competitive functioning of the allowance system. Such system shall provide, not later than the commencement date of the nitrogen oxides allowance requirement under section 452, for one or more facility-wide accounts for holding sulfur dioxide allowances, nitrogen oxides allowances, and, if applicable, mercury allowances for all affected units at an affected facility. With regard to sulfur dioxide allowances, the Administrator shall implement this subsection under 40 CFR part 73 (2002), amended as appropriate by the Administrator. With regard to nitrogen oxides allowances and mercury allowances, the Administrator shall implement this subsection by promulgating regulations not later than 24 months after the date of enactment of the Clear Skies Act of 2002. All allowance allocations and transfers shall, upon recording by the Administrator, be deemed a part of each unit's or facility's permit requirements pursuant to section 404, without any further permit review and revision.

''(d) NATURE OF ALLOWANCES.—A sulfur dioxide allowance, nitrogen oxides allowance, or mercury allowance allocated, auctioned, or sold by the Administrator under this title is a limited authorization to emit one ton of sulfur dioxide, one ton of nitrogen oxides, or one ounce of mercury, as the case may be, in accordance with the provisions of this title. Such allowance does not constitute a property right. Nothing in this title or in any other provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization. Nothing in this section relating to allowances shall be construed as affecting the application of, or compliance with, any other provision of this Act to an affected unit or facility, including the provisions related to applicable National Ambient Air Quality Standards and State implementation plans. Nothing in this section shall be construed as requiring a change of any kind in any State law regulating electric utility rates and charges or affecting any State law regarding such State regulation or as limiting State regulation (including any prudency review) under such a State law. Nothing in this section shall be construed as modifying the Federal Power Act or as affecting the authority of the Federal Energy Regulatory Commission under that Act. Nothing in this title shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established. Allowances, once allocated or auctioned to a person by the Administrator, may be received, held, and temporarily or permanently transferred in accordance with this title and the regulations of the Administrator without regard to whether or not a permit is in effect under title V or section 404 with respect to the unit for which such allowance was originally allocated and recorded.

''(e) PROHIBITION.—

''(1) It shall be unlawful for any person to hold, use, or transfer any allowance allocated, auctioned, or sold by the Administrator under this title, except in accordance with regulations promulgated by the Administrator.

''(2) It shall be unlawful for any affected unit or for the affected units at a facility to emit sulfur dioxide, nitrogen oxides, and mercury, as the case may be, during a year in excess of the number of allowances held for that unit or facility for that year by the owner or operator as provided in sections 412(c), 422, 432, 452, and 472.

''(3) The owner or operator of a facility may purchase allowances directly from the Administrator to be used only to meet the requirements of sections 422, 432, 452, and 472, as the case may be, for the year in which the purchase is made or the prior year. Not later than 36 months after the date of enactment of the Clear Skies Act of 2003, the Administrator shall promulgate regulations providing for direct sales of sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances to an owner or operator of a facility. The regulations shall provide that—

''(A) such allowances may be used only to meet the requirements of section 422, 432, 452, and 472, as the case may be, for such facility and for the year in which the purchase is made or the prior year,

''(B) each such sulfur dioxide allowance shall be sold for $4,000, each such nitrogen

oxides allowance shall be sold for $4,000, and each such mercury allowance shall be sold for $2,187.50, with such prices adjusted for inflation based on the Consumer Price Index on the date of enactment of the Clear Skies Act of 2003 and annually thereafter,

''(C) the proceeds from any sales of allowances under subparagraph (B) shall be deposited in the United States Treasury,

''(D) the allowances directly purchased for use for the year specified in subparagraph (A) shall be taken from, and reduce, the amount of sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that would otherwise be auctioned under section 423, 453, or 473 starting for the year after the specified year and continuing for each subsequent year as necessary,

''(E) if an owner or operator does not use any such allowance in accordance with paragraph (A)—

''(i) the owner or operator shall hold the allowance for deduction by the Administrator, and

''(ii) the Administrator shall deduct the allowance, without refund or other form of recompense, and offer it for sale in the auction from which it was taken under subparagraph (D) or a subsequent relevant auction as necessary, and

''(F) if the direct sales of allowances result in the removal of all sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, from auctions under section 423, 453, or 473 for 3 consecutive years, the Administrator shall conduct a study to determine whether revisions to the relevant allowance trading program are necessary and shall report the results to the Congress.

''(4) Allowances may not be used prior to the calendar year for which they are allocated or auctioned. Nothing in this section or in the allowance system regulations shall relieve the Administrator of the Administrator's permitting, monitoring and enforcement obligations under this Act, nor relieve affected facilities of their requirements and liabilities under the Act.

''(f) COMPETITIVE BIDDING FOR POWER SUPPLY.—Nothing in this title shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established.

''(g) APPLICABILITY OF THE ANTITRUST LAWS.—(1) Nothing in this section affects—

''(A) the applicability of the antitrust laws to the transfer, use, or sale of allowances, or

''(B) the authority of the Federal Energy Regulatory Commission under any provision of law respecting unfair methods of competition or anticompetitive acts or practices.

''(2) As used in this section, 'antitrust laws' means those Acts set forth in section 1 of the Clayton Act (15 U.S.C. 12), as amended.

''(h) PUBLIC UTILITY HOLDING COMPANY ACT.—The acquisition or disposition of allowances pursuant to this title including the issuance of securities or the undertaking of any other financing transaction in connection with such allowances shall not be subject to the provisions of the Public Utility Holding Company Act of 1935.

''(i) INTERPOLLUTANT TRADING.—Not later 6 years after the enactment of the Clear Skies Act of 2003, the Administrator shall furnish to the Congress a study evaluating the environmental and economic consequences of amending this title to permit trading sulfur dioxide allowances for nitrogen oxides allowances and nitrogen oxides allowances for sulfur dioxide allowances.

''(j) INTERNATIONAL TRADING.—Not later than 24 months after the date of enactment of the Clear Skies Act of 2003, the Administrator shall furnish to the Congress a study evaluating the feasibility of international trading of sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances.

''SEC. 404. PERMITS AND COMPLIANCE PLANS.

''(a) PERMIT PROGRAM.—The provisions of this title shall be implemented, subject to section 403, by permits issued to units and facilities subject to this title and enforced in accordance with the provisions of title V, as modified by this title. Any such permit issued by the Administrator, or by a State with an approved permit program, shall prohibit—

''(1) annual emissions of sulfur dioxide, nitrogen oxides, and mercury in excess of the number of allowances required to be held in accordance with sections 412(c), 422, 432, 452, and 472,

''(2) exceeding applicable emissions rates under section 441,

''(3) the use of any allowance prior to the year for which it was allocated or auctioned, and

''(4) contravention of any other provision of the permit.

No permit shall be issued that is inconsistent with the requirements of this title, and title V as applicable.

''(b) COMPLIANCE PLAN.—Each initial permit application shall be accompanied by a compliance plan for the facility to comply with its requirements under this title. Where an affected facility consists of more than one affected unit, such plan shall cover all such units, and such facility shall be considered a 'facility' under section 502(c). Nothing in this section regarding compliance plans or in title V shall be construed as affecting allowances.

''(1) Submission of a statement by the owner or operator, or the designated representative of the owners and operators, of a unit subject to the emissions limitation requirements of sections 412(c), 413, 414, and 441, that the unit will meet the applicable emissions limitation requirements of such sections in a timely manner or that, in the case of the emissions limitation requirements of sections 412(c), 413, and 414, the owners and operators will hold sulfur dioxide allowances in the amount required by section 412(c), shall be deemed to meet the proposed and approved compliance planning requirements of this section and title V, except that, for any unit that will meet the requirements of this title by means of an alternative method of compliance authorized under section 413 (b), (c), (d), or (f), section 416, and section 441 (d) or (e), the proposed and approved compliance plan, permit application and permit shall include, pursuant to regulations promulgated by the Administrator, for each alternative method of compliance a comprehensive description of the schedule and means by which the unit will rely on one or more alternative methods of compliance in the manner and time authorized under subpart 1 of part B or subpart 1 of part C.

''(2) Submission of a statement by the owner or operator, or the designated representative, of a facility that includes a unit subject to the emissions limitation requirements of sections 422, 432, 452, and 472 that the owner or operator will hold sulfur dioxide allowances, nitrogen oxide allowances, and mercury allowances, as the case may be, in the amount required by such sections shall be deemed to meet the proposed and approved compliance planning requirements of this section and title V with regard to subparts A through D.

''(3) Recording by the Administrator of transfers of allowances shall amend automatically all applicable proposed or approved permit applications, compliance plans and permits.

''(c) PERMITS.—The owner or operator of each facility under this title that includes an affected unit subject to title V shall submit a permit application and compliance plan with regard to the applicable requirements under sections 412(c), 422, 432, 441, 452, and 472 for sulfur dioxide emissions, nitrogen oxide emissions, and mercury emissions from such unit to the permitting authority in accordance with the deadline for submission of permit applications and compliance plans under title V. The permitting authority shall issue a permit to such owner or operator, or the designated representative of such owner or operator, that satisfies the requirements of title V and this title.

''(d) AMENDMENT OF APPLICATION AND COMPLIANCE PLAN.—At any time after the submission of an application and compliance plan under this section, the applicant may submit a revised application and compliance plan, in accordance with the requirements of this section.

''(e) PROHIBITION.—

''(1) It shall be unlawful for an owner or operator, or designated representative, required to submit a permit application or compliance plan under this title to fail to submit such application or plan in accordance with the deadlines specified in this section or to otherwise fail to comply with regulations implementing this section.

''(2) It shall be unlawful for any person to operate any facility subject to this title except in compliance with the terms and requirements of a permit application and compliance plan (including amendments thereto) or permit issued by the Administrator or a State with an approved permit program. For purposes of this subsection, compliance, as provided in section 504(f), with a permit issued under title V which complies with this title for facilities subject to this title shall be deemed compliance with this subsection as well as section 502(a).

''(3) In order to ensure reliability of electric power, nothing in this title or title V shall be construed as requiring termination of operations of a unit serving a generator for failure to have an approved permit or compliance plan under this section, except that any such unit may be subject to the applicable enforcement provisions of section 113.

''(f) CERTIFICATE OF REPRESENTATION.—No permit shall be issued under this section to an affected unit or facility until the designated representative of the owners or operators has filed a certificate of representation with regard to matters under this title, including the holding and distribution of allowances and the proceeds of transactions involving allowances.

''SEC. 405. MONITORING, REPORTING, AND RECORDKEEPING REQUIREMENTS.

''(a) APPLICABILITY.—

''(1)(A) The owner and operator of any facility subject to this title shall be required to install and operate CEMS on each affected unit subject to subpart 1 of part B or subpart 1 of part C at the facility, and to quality assure the data, for sulfur dioxide, nitrogen oxides, opacity, and volumetric flow at each such unit.

''(B) The Administrator shall, by regulations, specify the requirements for CEMS under subparagraph (A), for any alternative monitoring system that is demonstrated as providing information with the same precision, reliability, accessibility, and time lines as that provided by CEMS, and for recordkeeping and reporting of information from such systems. Such regulations may include limitations on the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure

the emissions reductions contemplated by this title. Where 2 or more units utilize a single stack, a separate CEMS shall not be required for each unit, and for such units the regulations shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for each such unit.

''(2)(A) The owner and operator of any facility subject to this title shall be required to install and operate CEMS to monitor the emissions from each affected unit at the facility, and to quality assure the data for—

''(i) sulfur dioxide, opacity, and volumetric flow for all affected units subject to subpart 2 of part B at the facility,

''(ii) nitrogen oxides for all affected units subject to subpart 2 of part C at the facility, and

''(iii) mercury for all affected units subject to part D at the facility.

''(B)(i) The Administrator shall, by regulations, specify the requirements for CEMS under subparagraph (A), for any alternative monitoring system that is demonstrated as providing information with the same precision, reliability, accessibility, and timeliness as that provided by CEMS, for recordkeeping and reporting of information from such systems, and if necessary under section 474, for monitoring, recordkeeping, and reporting of the mercury content of fuel.

''(ii) Notwithstanding the requirements of clause (i), the regulations under clause (i) may specify an alternative monitoring system for determining mercury emissions to the extent that the Administrator determines that CEMS for mercury with appropriate vendor guarantees are not commercially available.

''(iii) The regulations under clause (i) may include limitation on the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure the emissions reductions contemplated by this title.

''(iv) Except as provided in clause (v), the regulations under clause (i) shall not require a separate CEMS for each unit where two or more units utilize a single stack and shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for such units.

''(v) The regulations under clause (i) may require a separate CEMS for each unit where two or more units utilize a single stack and another provision of the Act requires data under subparagraph (A) for an individual unit.

''(b) DEADLINES.—

''(1) NEW UTILITY UNITS.—Upon commencement of commercial operation of each new utility unit under subpart I of part B, the unit shall comply with the requirements of subsection (a)(1).

''(2) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 2 OF PART B FOR INSTALLATION AND OPERATION OF CEMS.—By the later of the date 12 months before the commencement date of the sulfur dioxide allowance requirement of section 422, or the date on which the unit commences operation, the owner or operator of each affected unit under subpart 2 of part B shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to sulfur dioxide, opacity, and volumetric flow.

''(3) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 3 OF PART B FOR INSTALLATION AND OPERATION OF CEMS.—By the later of January 1 of the year before the first covered year or the date on which the unit commences operation, the owner or operator of each affected unit under subpart 3 of part B shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to sulfur dioxide and volumetric flow.

''(4) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 2 OF PART C FOR INSTALLATION AND OPERATION OF CEMS.—By the later of the date 12 months before the commencement date of the nitrogen oxides allowance requirement under section 452, or the date on which the unit commences operation, the owner or operator of each affected unit under subpart 2 of part C shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to nitrogen oxides.

''(5) DEADLINE FOR AFFECTED UNITS UNDER PART D FOR INSTALLATION AND OPERATION OF CEMS.—By the later of the date 12 months before the commencement date of the mercury allowance requirement of section 472, or the date on which the unit commences operation, the owner or operator of each affected unit under part D shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under paragraph (a)(2) with regard to mercury.

''(c) UNAVAILABILITY OF EMISSIONS DATA.—If CEMS data or data from an alternative monitoring system approved by the Administrator under subsection (a) is not available for any affected unit during any period of a calendar year in which such data is required under this title, and the owner or operator cannot provide information, satisfactory to the Administrator, on emissions during that period, the Administrator shall deem the unit to be operating in an uncontrolled manner during the entire period for which the data was not available and shall, by regulation, prescribe means to calculate emissions for that period. The owner or operator shall be liable for excess emissions fees and offsets under section 406 in accordance with such regulations. Any fee due and payable under this subsection shall not diminish the liability of the unit's owner or operator for any fine, penalty, fee or assessment against the unit for the same violation under any other section of this Act.

''(d) IMPLEMENTATION.—With regard to sulfur dioxide, nitrogen oxides, opacity, and volumetric flow, the Administrator shall implement subsections (a) and (c) under 40 CFR part 75 (2002), amended as appropriate by the Administrator. With regard to mercury, the Administrator shall implement subsections (a) and (c) by issuing proposed regulations not later than 36 months before the commencement date of the mercury allowance requirement under section 472 and final regulations not later than 24 months before that commencement date.

''(e) PROHIBITION.—It shall be unlawful for the owner or operator of any facility subject to this title to operate a facility without complying with the requirements of this section, and any regulations implementing this section.

''SEC. 406. EXCESS EMISSIONS PENALTY; GENERAL COMPLIANCE WITH OTHER PROVISIONS; ENFORCEMENT.

''(a) EXCESS EMISSIONS PENALTY.—

''(1) AMOUNT FOR OXIDES OF NITROGEN.—The owner or operator of any unit subject to the requirements of section 441 that emits nitrogen oxides for any calendar year in excess of the unit's emissions limitation requirement shall be liable for the payment of an excess emissions penalty, except where such emission were authorized pursuant to section 110(f). That penalty shall be calculated on the basis of the number of tons emitted in excess of the unit's emissions limitation requirement multiplied by $2,000.

''(2) AMOUNT FOR SULFUR DIOXIDE BEFORE 2008.—The owner or operator of any unit subject to the requirements of section 412(c) that emits sulfur dioxide for any calendar year before 2008 in excess of the sulfur dioxide allowances the owner or operator holds for use for the unit for that calendar year shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated as follows:

''(A) the product of the unit's excess emissions (in tons) multiplied by the clearing price of sulfur dioxide allowances sold at the most recent auction under section 417, if within thirty days after the date on which the owner or operator was required to hold sulfur dioxide allowances—

''(i) the owner or operator offsets the excess emissions in accordance with paragraph (b)(1); and

''(ii) the Administrator receives the penalty required under this subparagraph.

''(B) if the requirements of clause (A)(i) or (A)(ii) are not met, 300 percent of the product of the unit's excess emissions (in tons) multiplied by the clearing price of sulfur dioxide allowances sold at the most recent auction under section 417.

''(3) AMOUNT FOR SULFUR DIOXIDE AFTER 2007.—If the units at a facility that are subject to the requirements of section 412(c) emit sulfur dioxide for any calendar year after 2007 in excess of the sulfur dioxide allowances that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated under paragraph (4)(A) or (4)(B).

''(4) UNITS SUBJECT TO SECTIONS 422, 432, 452, OR 472 .—If the units at a facility that are subject to the requirements of section 422, 432, 452, or 472 emit sulfur dioxide, nitrogen oxides, or mercury for any calendar year in excess of the sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated as follows:

''(A) the product of the units' excess emissions (in tons or, for mercury emissions, in ounces) multiplied by the clearing price of sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, sold at the most recent auction under section 423, 453, or 473, if within thirty days after the date on which the owner or operator was required to hold sulfur dioxide, nitrogen oxides allowance, or mercury allowances as the case may be—

''(i) the owner or operator offsets the excess emissions in accordance with paragraph (b)(2) or (b)(3), as applicable; and

''(ii) the Administrator receives the penalty required under this subparagraph.

''(B) if the requirements of clause (A)(i) or (A)(ii) are not met, 300 percent of the product of the units' excess emissions (in tons or, for mercury emissions, in ounces) multiplied by the clearing price of sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, sold at the most recent auction under section 423, 453, or 473.

''(5) PAYMENT.—Any penalty under paragraph 1, 2, 3, or 4 shall be due and payable without demand to the Administrator as provided in regulations issued by the Administrator. With regard to the penalty under

paragraph 1, the Administrator shall implement this paragraph under 40 CFR part 77 (2002), amended as appropriate by the Administrator. With regard to the penalty under paragraphs 2, 3, and 4, the Administrator shall implement this paragraph by issuing regulations no later than 24 months after the date of enactment of the Clear Skies Act of 2003. Any such payment shall be deposited in the United States Treasury. Any penalty due and payable under this section shall not diminish the liability of the unit's owner or operator for any fine, penalty or assessment against the unit for the same violation under any other section of this Act.

''(b) EXCESS EMISSIONS OFFSET.—

''(1) The owner or operator of any unit subject to the requirements of section 412(c) that emits sulfur dioxide during any calendar year before 2008 in excess of the sulfur dioxide allowances held for the unit for the calendar year shall be liable to offset the excess emissions by an equal tonnage amount in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances equal to the excess tonnage from those held for the facility for the calendar year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

''(2) If the units at a facility that are subject to the requirements of section 412(c) emit sulfur dioxide for a year after 2007 in excess of the sulfur dioxide allowances that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable to offset the excess emissions by an equal amount of tons in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances equal to the excess emissions in tons from those held for the facility for the year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

''(3) If the units at a facility that are subject to the requirements of section 422, 432, 452, or 472 emit sulfur dioxide, nitrogen oxides, or mercury for any calendar year in excess of the sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances, as the case may be, that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable to offset the excess emissions by an equal amount of tons or, for mercury, ounces in the following calendar year, or such longer period as the Administrator may prescribe. The Administrator shall deduct sulfur dioxide allowances, nitrogen oxide allowances, or mercury allowances, as the case may be, equal to the excess emissions in tons or, for mercury, ounces from those held for the facility for the year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

''(c) PENALTY ADJUSTMENT.—The Administrator shall, by regulation, adjust the penalty specified in subsection (a)(1) for inflation, based on the Consumer Price Index, on November 15, 1990, and annually thereafter.

''(d) PROHIBITION.—It shall be unlawful for the owner or operator of any unit or facility liable for a penalty and offset under this section to fail—

''(1) to pay the penalty under subsection (a); or

''(2) to offset excess emissions as required by subsection (b).

''(e) SAVINGS PROVISION.—Nothing in this title shall limit or otherwise affect the application of section 113, 114, 120, or 304 except as otherwise explicitly provided in this title.

''(f) OTHER REQUIREMENTS.—Except as expressly provided, compliance with the requirements of this title shall not exempt or exclude the owner or operator of any facility subject to this title from compliance with any other applicable requirements of this Act. Notwithstanding any other provision of this Act, no State or political subdivision thereof shall restrict or interfere with the transfer, sale, or purchase of allowances under this title.

''(g) VIOLATIONS.—Violation by any person subject to this title of any prohibition of, requirement of, or regulation promulgated pursuant to this title shall be a violation of this Act. In addition to the other requirements and prohibitions provided for in this title, the operation of any affected unit or the affected units at a facility to emit sulfur dioxide, nitrogen oxides, or mercury in violation of section 412(c), 422, 432, 452, and 472, as the case may be, shall be deemed a violation, with each ton or, in the case of mercury, each ounce emitted in excess of allowances held constituting a separate violation.

''SEC. 407. ELECTION FOR ADDITIONAL UNITS.

''(a) APPLICABILITY.—The owner or operator of any unit that is not an affected EGU under subpart 2 of part B and subpart 2 of part C and whose emissions of sulfur dioxide and nitrogen oxides are vented only through a stack or duct may elect to designate such unit as an affected unit under subpart 2 of part B and subpart 2 of part C. If the owner or operator elects to designate a unit that is coal-fired and emits mercury vented only through a stack or duct, the owner or operator shall also designate the unit as an affected unit under part D.

''(b) APPLICATION.—The owner or operator making an election under subsection (a) shall submit an application for the election to the Administrator for approval.

''(c) APPROVAL.—If an application for an election under subsection (b) meets the requirements of subsection (a), the Administrator shall approve the designation as an affected unit under subpart 2 of part B and subpart 2 of part C and, if applicable, under part D, subject to the requirements in subsections (d) through (g).

''(d) ESTABLISHMENT OF BASELINE.—

''(1) After approval of the designation under subsection (c), the owner or operator shall install and operate CEMS on the unit, and shall quality assure the data, in accordance with the requirements of paragraph (a)(2) and subsections (c) through (e) of section 405, except that, where two or more units utilize a single stack, separate monitoring shall be required for each unit.

''(2) The baselines for heat input and sulfur dioxide, nitrogen oxides, and mercury emission rates, as the case may be, for the unit shall be the unit's heat input and the emission rates of sulfur dioxide, nitrogen oxides, and mercury for a year starting after approval of the designation under subsection (c). The Administrator shall issue regulations requiring all the unit's baselines to be based on the same year and specifying minimum requirements concerning the percentage of the unit's operating hours for which quality assured CEMS data must be available during such year.

''(e) EMISSION LIMITATIONS.—After approval of the designation of the unit under paragraph (c), the unit shall become:

''(1) an affected unit under subpart 2 of part B, and shall be allocated sulfur dioxide allowances under paragraph (f), starting the later of January 1, 2010, or January 1 of the year after the year on which the unit's baselines are based under subsection (d);

''(2) an affected unit under subpart 2 of part C, and shall be allocated nitrogen oxides allowances under paragraph (f), starting the later of January 1, 2008, or January 1 of the year after the year on which the unit's baselines are based under subsection (d); and

''(3) if applicable, an affected unit under part D, and shall be allocated mercury allowances, starting the later of January 1, 2010, or January 1 of the year after the year on which the unit's baselines are based under subsection (d).

''(f) ALLOCATIONS AND AUCTION AMOUNTS.—

''(1) The Administrator shall promulgate regulations determining the allocations of sulfur dioxide allowances, nitrogen oxides allowances, and, if applicable, mercury allowances for each year during which a unit is an affected unit under subsection (e). The regulations shall provide for allocations equal to 50 percent of the following amounts, as adjusted under paragraph (2)—

''(A) the lesser of the unit's baseline heat input under subsection (d) or the unit's heat input for the year before the year for which the Administrator is determining the allocations; multiplied by

''(B) the lesser of—

''(i) the unit's baseline sulfur dioxide emission rate, nitrogen oxides emission rate, or mercury emission rate, as the case may be;

''(ii) the unit's sulfur dioxide emission rate, nitrogen oxides emission rate, or mercury emission rate, as the case may be, during 2002, as determined by the Administrator based, to the extent available, on information reported to the State where the unit is located; or

''(iii) the unit's most stringent State or Federal emission limitation for sulfur dioxide, nitrogen oxides, or mercury applicable to the year on which the unit's baseline heat input is based under subsection (d).

''(2) The Administrator shall reduce the allocations under paragraph (1) by 1.0 percent in the first year for which the Administrator is allocating allowances to the unit, by an additional 1.0 percent of the allocations under paragraph (1) each year starting in the second year through the twentieth year, and by an additional 2.5 percent of the allocations under paragraph (1) each year starting in the 21 year and each year thereafter. The Administrator shall make corresponding increases in the amounts of allowances auctioned under sections 423, 453, and 473.

''(g) WITHDRAWAL.—The Administrator shall promulgate regulations withdrawing from the approved designation under subsection (c) any unit that qualifies as an affected EGU under subpart 2 of part B, subpart 2 of part C, or part D after the approval of the designation of the unit under subsection (c).

''(h) The Administrator shall promulgate regulations implementing this section within 24 months of the date of enactment of the Clear Skies Act of 2003.

''SEC. 408. CLEAN COAL TECHNOLOGY REGULATORY INCENTIVES.

''(a) DEFINITION.—For purposes of this section, 'clean coal technology' means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process steam, or industrial products, which is not in widespread use as of the date of enactment of this title.

''(b) REVISED REGULATIONS FOR CLEAN COAL TECHNOLOGY DEMONSTRATIONS.—

''(1) APPLICABILITY.—This subsection applies to physical or operational changes to existing facilities for the sole purpose of installation, operation, cessation, or removal of a temporary or permanent clean coal technology demonstration project. For the purposes of this section, a clean coal technology

demonstration project shall mean a project using funds appropriated under the heading 'Department of Energy—Clean Coal Technology', up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for qualifying project shall be at least 20 percent of the total cost of the demonstration project.

''(2) TEMPORARY PROJECTS.—Installation, operation, cessation, or removal of a temporary clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated, shall not subject such facility to the requirements of section 111 or part C or D of title I.

''(3) PERMANENT PROJECTS.—For permanent clean coal technology demonstration projects that constitute repowering as defined in section 411, any qualifying project shall not be subject to standards of performance under section 111 or to the review and permitting requirements of part C for any pollutant the potential emissions of which will not increase as a result of the demonstration project.

''(4) EPA REGULATIONS.—Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations or interpretive rulings to revise requirements under section 111 and parts C and D, as appropriate, to facilitate projects consistent in this subsection. With respect to parts C and D, such regulations or rulings shall apply to all areas in which EPA is the permitting authority. In those instances in which the State is the permitting authority under part C or D, any State may adopt and submit to the Administrator for approval revisions to its implementation plan to apply the regulations or rulings promulgated under this subsection.

''(c) EXEMPTION FOR REACTIVATION OF VERY CLEAN UNITS.—Physical changes or changes in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation shall not subject the unit to the requirements of section 111 or part C of the Act where the unit—

''(1) has not been in operation for the two-year period prior to November 15, 1990, and the emissions from such unit continue to be carried in the permitting authority's emissions inventory on November 15, 1990,

''(2) was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent,

''(3) is equipped with low-NO_X burners prior to the time of commencement, and

''(4) is otherwise in compliance with the requirements of this Act.

''SEC. 409. AUCTIONS.

''(a) IN GENERAL.—(1) Commencing in 2005 and in each year thereafter, the Administrator shall conduct auctions, as required under sections 423, 424, 426, 434, 453, 454, 473, and 474, at which allowances shall be offered for sale in accordance with regulations promulgated by the Administrator no later than 24 months after the date of enactment of the Clear Skies Act of 2003.

''(2) Such regulations shall promote an efficient auction outcome and a competitive marketfor allowances.

''(3) Such regulations may provide allowances to be offered for sale before or during the year for which such allowances may be used to meet the requirement to hold allowances under section 422, 432, 452, and 472, as the case may be. Such regulations shall specify the frequency and timing of auctions and may provide for more than one auction of sulfur dioxide allowances, nitrogen oxides allowances, or mercury allowances during a year. Allowances purchased at the auction may be used for any purpose and at any time after the auction, subject to the provisions of this title.

''(4) The regulations shall provide that each auction shall be open to any person. A person wishing to bid for allowances in the auction shall submit bids according to auction procedures, a bidding schedule, a bidding means, and requirements for financial guarantees specified in the regulations. Winning bids, and required payments, for allowances shall be determined in accordance with the regulations. For any winning bid, the Administrator shall record the allowances in the Allowance Tracking System under section 403(c) only after the required payment for such allowances is received.

''(b) DEFAULT AUCTION PROCEDURES.—If the Administrator is required to conduct an auction of allowances under subsection (a) before regulations have been promulgated under that subsection, such auction shall be conducted as follows:

''(1) The auction shall begin on the first business day in October of the year in which the auction is required or, of the year before the first year for which the allowances may be used to meet the requirements of section 403(e)(2).

''(2) The auction shall be open to any person.

''(3) The auction shall be a multiple-round auction in which sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances are offered simultaneously.

''(4) In order to bid for allowances included in the auction, a person shall submit, and the Administrator must receive by the date three business days before the auction, one or more initial bids to purchase a specified quantity of sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be, at a reserve price specified by the Administrator. The bidder shall identify the account in the Allowance Tracking System under section 403(c) in which the such allowances that are purchased are to be recorded. Each bid must be guaranteed by a certified check, a funds transfer, or, in a form acceptable to the Administrator, a letter of credit for such quantity multiplied by the reserve price payable to the U.S. EPA.

''(5) The procedures in paragraph (4) shall constitute the first round of the auction.

''(6) In each round of the auction, the Administrator shall—

''(A) announce current round reserve prices for sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances;

''(B) receive bids comprising nonnegative quantities for sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be;

''(C) determine whether bids are acceptable as meeting auction requirements;

''(D) for sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be, determine whether the sum of the acceptable bids exceeds the quantity of such allowances available for auction;

''(E) if the sum of the acceptable bids for sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be, exceeds the quantity of such allowances available for auction, increase the reserve price for the next round based on the amount by which the sum of such acceptable bids exceeds the quantity of such allowances;

''(F) if the sum of the acceptable bids for sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be, does not exceed the quantity of such allowances available for auction, declare that round the last round of the auction for such allowances.

''(7) In the second and all subsequent rounds of the auction, the Administrator shall require that, for sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be, a bidder's quantity bid may not exceed the bidder's quantity bid for such allowances in the first round of the auction.

''(8) After the auction, the Administrator shall publish the names of winning and losing bidders, their quantities awarded, and the final prices. The Administrator shall provide the successful bidders notice of the allowances that they have purchased within thirty days after payments equaling the quantity awarded multiplied by the corresponding final reserve price is collected by the Administrator. After the conclusion of the auction, the Administrator shall return payment to unsuccessful bidders and add any unsold allowances to the next relevant auction.

''(9) The Administrator may specify by regulations, without notice and opportunity for comment, the following auction requirements and procedures:

''(A) reserve prices for sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be;

''(B) procedures for adjusting reserve prices in each round;

''(C) procedures limiting a bidder s bids based on his or her bids in previous rounds;

''(D) rationing procedures to treat tie bids;

''(E) procedures allowing bids at intermediate prices between previous reserve prices and current reserve prices;

''(F) procedures allowing bid withdrawals before the final round of the auction;

''(G) anti-collusion rules;

''(H) market share limitations on a bidder or associated bidders;

''(I) aggregate information made available to bidders during the auction;

''(J) proxy bidding or procedures for facilitating participation by small bidders;

''(K) levels and details of financial guarantees;

''(L) technical specifications for electronic bidding; and

''(M) bidding schedules and other administrative requirements and procedures of the auction.

''(c) DELEGATION OR CONTRACT.—The Administrator may by delegation or contract provide for the conduct of auctions under the Administrator's supervision by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations.

''(d) PROCEEDS.—The proceeds from any auction conducted under this title shall be deposited in the United States Treasury.

''SEC. 410. EVALUATION OF LIMITATIONS ON TOTAL SULFUR DIOXIDE, NITROGEN OXIDES, AND MERCURY EMISSIONS THAT START IN 2018.

''(a) EVALUATION.—(1) The Administrator, in consultation with the Secretary of Energy, shall study whether the limitations on the total annual amounts of allowances available starting in 2018 for sulfur dioxide under section 423, nitrogen oxides under section 453, and mercury under section 473 should be adjusted.

''(2) In conducting the study, the Administrator shall include the following analyses and evaluations concerning the pollutants under paragraph (1) of subsection (a)(1):

''(A) An evaluation of the need for further emission reductions from affected EGUs

under subpart 2 of part B, subpart 2 of part C, or part D and other sources to attain or maintain the national ambient air quality standards.

''(B) A benefit-cost analysis to evaluate whether the benefits of the limitations on the total annual amounts of allowances available starting in 2018 justify the costs and whether adjusting any of the limitations would provide additional benefits which justify the costs of such adjustment, taking into account both quantifiable and nonquantifiable factors.

''(C) The marginal cost effectiveness of reducing emissions for each pollutant.

''(D) The merits of allowing trading between nitrogen oxides emissions and sulfur dioxide emissions.

''(E) An evaluation of the relative marginal cost effectiveness of reducing sulfur dioxide and nitrogen oxide emissions from affected EGUs under subpart 2 of part B and subpart 2 of part C, as compared to the marginal cost effectiveness of controls on other sources of sulfur dioxide, nitrogen oxides and other pollutants that can be controlled to attain or maintain national ambient air quality standards.

''(F) An evaluation of the feasibility of attaining the limitations on the total annual amounts of allowances available starting in 2018 given the available control technologies and the ability to install control technologies by 2018, and the feasibility of attaining alternative limitations on the total annual amounts of allowances available starting in 2018 under paragraph (1) of subsection (a) for each pollutant, including the ability to achieve alternative limitations given the available control technologies, and the feasibility of installing the control technologies needed to meet the alternative limitation by 2018.

''(G) An assessment of the results of the most current research and development regarding technologies and strategies to reduce the emissions of one or more of these pollutants from affected EGUs under subpart 2 of part B, subpart 2 of part C, or part D, as applicable and the results of the most current research and development regarding technologies for other sources of the same pollutants.

''(H) The projected impact of the limitations on the total annual amounts of allowances available starting in 2018 and the projected impact of adjusting any of the limitations on the total annual amounts of allowances available starting in 2018 under paragraph (1) of subsection (a) on the safety and reliability of affected EGUs under subpart 2 of part B, subpart 2 of part C, or part D and on fuel diversity within the power generation section.

''(I) An assessment of the best available and most current scientific information relating to emissions, transformation and deposition of these pollutants, including studies evaluating—

''(i) the role of emissions of affected EGUs under subpart 2 of part B, subpart 2 of part C, or part D in the atmospheric formation of pollutants for which national ambient air quality standards exist;

''(ii) the transformation, transport, and fate of these pollutants in the atmosphere, other media, and biota;

''(iii) the extent to which effective control programs in other countries would prevent air pollution generated in those countries from contributing to nonattainment, or interfering with the maintenance of any national ambient air quality standards;

''(iv) whether the limitations starting in 2010 or 2018 will result in an increase in the level of any other pollutant and the level of any such increase; and

''(v) speciated monitoring data for particulate matter and the effect of various components of fine particulate matter on public health.

''(J) An assessment of the best available and most current scientific information relating to emissions, transformation and deposition of mercury, including studies evaluating—

''(i) known and potential human health and environmental effects of mercury;

''(ii) whether emissions of mercury from affected EGUs under part D contribute significantly to elevated levels of mercury in fish;

''(iii) human population exposure to mercury; and

''(iv) the relative marginal cost effectiveness of reducing mercury emissions from affected EGUs under part D, as compared to the marginal cost effectiveness of controls on other sources of mercury.

''(K) A comparison of the extent to which sources of mercury not located in the United States contributed to adverse affects on terrestrial or aquatic systems as opposed to the contribution from affected EGUs under part D, and the extent to which effective mercury control programs in other countries could minimize such impairment.

''(L) An analysis of the effectiveness and efficiency of the sulfur dioxide allowance program under subpart 2 of part B, the nitrogen oxides allowance program under subpart 2 of part C, and the mercury allowance program under part D.

''(3) As part of the study, the Administrator shall take into account the best available information pursuant to the review of the air quality criteria for particulate matter under section 108.

''(b) PEER REVIEW PROCEDURES.—(1) The draft results of the study under subsection (a), including the benefit-cost analysis, the risk assessment, technological information and related technical documents shall be subject to an independent and external peer review in accordance with this section. Any documents that are to be considered by the Administrator in the study shall be independently peer reviewed no later than July 1, 2008. The peer review required under this section shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

''(2) The Administrator shall conduct the peer review in an open manner. Such peer review shall—

''(A) be conducted through a formal panel that is broadly representative and involves qualified specialists who—

''(i) are selected primarily on the basis of their technical expertise relevant to the analyses required under this section;

''(ii) disclose to the agency prior technical or policy positions they have taken on the issues under consideration; and

''(iii) disclose to the agency their sources of personal and institutional funding from the private or public sectors;

''(B) contain a balanced presentation of all considerations, including minority reports;

''(C) provide adequate protections for confidential business information and trade secrets, including requiring panel members or participants to enter into confidentiality agreements;

''(D) afford an opportunity for public comment; and

''(E) be complete by no later than January 1, 2009.

''(2) The Administrator shall respond, in writing, to all significant peer review and public comments and certify that—

''(A) each peer review participant has the expertise and independence required under this section; and

''(B) the agency has adequately responded to the peer review comments as required under this section.

''(c) RECOMMENDATION TO CONGRESS.—The Administrator, in consultation with the Secretary of Energy, should submit to Congress no later than July 1, 2009, a recommendation whether to revise the limitations on the total annual amounts of allowances available starting in 2018 under paragraph (1) of subsection (a). The recommendation shall include the final results of the study under subsections (a) and (b) and shall address the factors described in paragraph (2) of subsection (a). The Administrator may submit separate recommendations addressing sulfur dioxide, nitrogen oxides, or mercury at any time after the study has been completed under paragraph (2) of subsection (a) and the peer review process has been completed under subsection (b).

''PART B—SULFUR DIOXIDE EMISSION REDUCTIONS

''Subpart 1—Acid Rain Program

''SEC. 410. EVALUATION OF LIMITATIONS ON TOTAL SULFUR DIOXIDE, NITROGEN OXIDES, AND MERCURY EMISSIONS THAT START IN 2018.

''(a) Evaluation.—(1) The Administrator, in consultation with the Secretary of Energy, shall study whether the limitations on the total annual amounts of allowances available starting in 2018 for sulfur dioxide under section 423, nitrogen oxides under section 453, and mercury under section 473 should be adjusted.

''(2) In conducting the study, the Administrator shall include the following analyses and evaluations concerning the pollutants under paragraph (a)(1),

''(A) an evaluation of the need for further emission reductions from affected EGUs under subpart 2 of part B, subpart 2 of part C, or part D and other sources to attain or maintain the national ambient air quality standards;

''(B) A benefit-cost analysis to evaluate whether the benefits of the limitations on the total annual amounts of allowances available starting in 2018 justify the costs and whether adjusting any of the limitations would provide additional benefits which justify the costs of such adjustment, taking into account both quantifiable and nonquantifiable factors;

''(C) the marginal cost effectiveness of reducing emissions for each pollutant;

''(D) the merits of allowing trading between NO_x and SO_2 limitations;

''(E) an evaluation of the relative marginal cost effectiveness of reducing sulfur dioxide and nitrogen oxide emissions from affected EGUs under sub-part 2 of part B and subpart 2 of part C, as compared to the marginal cost effectiveness of controls on other sources of sulfur dioxide, nitrogen oxides and other pollutants that can be controlled to attain or maintain national ambient air quality standard;

''(F) an evaluation of the feasibility of attaining the limitations on the total annual amounts of allowances available starting in 2018 given the available control technologies and the ability to install control technologies by 2018, and the feasibility of attaining alternative limitations on the total annual amounts of allowances available starting in 2018 under paragraph (a)(1) for each pollutant, including the ability to achieve alternative limitations given the available control technologies, and the feasibility of installing the control technologies needed to meet the alternative limitation by 2018;

''(G) an assessment of the results of the most current research and development regarding technologies and strategies to reduce the emissions of one or more of these pollutants from affected EGUs under subpart 2 of part B, subpart 2 of part C, or part D, as

applicable and the results of the most current research and development regarding technologies for other sources of the same pollutants;

''(H) the projected impact of the limitations on the total annual amounts of allowances available starting in 2018 and the projected impact of adjusting any of the limitations on the total annual amounts of allowances available starting in 2018 under paragraph (a)(1) on the safety and reliability of affected EGUs under subpart 2 of part B, subpart 2 of part C, or part D and on fuel diversity within the power generation section;

''(I) an assessment of the best available and most current scientific information relating to emissions, transformation and deposition of these pollutants, including studies evaluating—

''(i) the role of emissions of affected EGUs under subpart 2 of part B, subpart 2 of part C, or part D in the atmospheric formation of pollutants for which national ambient air quality standards exist;

''(ii) the transformation, transport, and fate of these pollutants in the atmosphere, other media, and biota;

''(iii) the extent to which effective control programs in other countries would prevent air pollution generated in those countries from contributing to nonattainment, or interfering with the maintenance of any national ambient air quality standards;

''(iv) whether the limitations starting in 2010 or 2018 will result in an increase in the level of any other pollutant and the level of any such increase; and

''(v) speciated monitoring data for particulate matter and the effect of various elements of fine particulate matter on public health;

''(J) an assessment of the best available and most current scientific information relating to emissions, transformation and deposition of mercury, including studies evaluating—

''(i) known and potential human health and environmental effects of mercury;

''(ii) whether emissions of mercury from affected EGUs under part D contribute significantly to elevated levels of mercury in fish;

''(iii) human population exposure to mercury; and

''(iv) the relative marginal cost effectiveness of reducing mercury emissions from affected EGUs under part D, as compared to the marginal cost effectiveness of controls on other sources of mercury;

''(K) a comparison of the extent to which sources of mercury not located in the United States contributed to adverse affects on terrestrial or aquatic systems as opposed to the contribution from affected EGUs under part D, and the extent to which effective mercury control programs in other countries could minimize such impairment; and

''(L) an analysis of the effectiveness and efficiency of the sulfur dioxide allowance program under subpart 2 of part B, the nitrogen oxides allowance program under subpart 2 of part C, and the mercury allowance program under part D.

''(3) As part of the study, the Administrator shall take into account the best available information pursuant to the review of the air quality criteria for particulate matter under section 108.

''(b) PEER REVIEW PROCEDURES.—(1) The draft results of the study under subsection (a) shall be subject to an independent and external peer review in accordance with this section. Any documents that are to be considered by the Administrator in the study shall be independently peer reviewed no later than July 1, 2008. The peer review required under this section shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

''(2) The Administrator shall conduct the peer review in an open and rigorous manner. Such peer review shall—

''(A) be conducted through a formal panel that is broadly representative of the relevant scientific and technical views and involves qualified specialists who—

''(i) are selected primarily on the basis of their technical expertise relevant to the analyses required under this section;

''(iii) disclose to the agency prior technical or policy positions they have taken on the issues under consideration; and

''(iv) disclose to the agency their sources of personal and institutional funding from the private or public sectors;

''(B) contain a balanced presentation of all considerations, including minority reports;

''(C) provide adequate protections for confidential business information and trade secrets, including requiring panel members or participants to enter into confidentiality agreements;

''(D) afford an opportunity for public comment; and

''(E) be complete by no later than January 1, 2009.

''(2) The Administrator shall respond, in writing, to all significant peer review and public comments; and

''(3) The Administrator shall certify that—

''(A) each peer review participant has the expertise an independence required under this section; and

''(B) the agency has adequately responded to the peer review comments as required under this section.

''(c) RECOMMENDAITON TO CONGRESS.—The Administrator, in consultation with the Secretary of Energy, shall submit to Congress no later than July 1, 2009, a recommendation whether to revise the limitations on the total annual amounts of allowances available starting in 2018 under paragraph (a)(1). The recommendation shall include the final results of the study under subsections (a) and (b) and shall address the factors described in paragraph (2) of subsection (a). The Administrator may submit separate recommendations addressing sulfur dioxide, nitrogen oxides, or mercury at any time after the study has been completed under paragraph (2) of subsection (a) and the peer review process has been completed under subsection (b).

''SEC. 411. DEFINITIONS.

''For purposes of this subpart and subpart 1 of part B:

''(1) The term 'actual 1985 emission rate', for electric utility units means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emissions Inventory, Version, 2 National Utility reference File. For nonutility units, the term 'actual 1985 emission rate' means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emission Inventory, Version 2.

''(2) The term 'allowable 1985 emissions rate' means a federally enforceable emissions limitation for sulfur dioxide or oxides of nitrogen, applicable to the unit in 1985 or the limitation applicable in such other subsequent year as determined by the Administrator if such a limitation for 1985 does not exist. Where the emissions limitation for a unit is not expressed in pounds of emissions per million Btu, or the averaging period of that emissions limitation is not expressed on an annual basis, the Administrator shall calculate the annual equivalent of that emissions.

''(3) The term 'alternative method of compliance' means a method of compliance in accordance with one or more of the following authorities—

''(A) a substitution plan submitted and approved in accordance with subsections 413(b) and (c); or

''(B) a Phase I extension plan approved by the Administrator under section 413(d), using qualifying phase I technology as determined by the Administrator in accordance with that section.

''(4) The term 'baseline' means the annual quantity of fossil fuel consumed by an affected unit, measured in millions of British Thermal Units ('mmBtu's'), calculated as follows:

''(A) For each utility unit that was in commercial operation prior to January 1, 1985, the baseline shall be the annual average quantity of mmBtu's consumed in fuel during calendar years 1985, 1986, and 1987, as recorded by the Department of Energy pursuant to Form 767. For any utility unit for which such form was not filed, the baseline shall be the level specified for such unit in the 1985 National Acid Precipitation Assessment Program (NAPAP) Emissions Inventory, Version 2, National Utility Reference File (NURF) or in a corrected data base as established by the Administrator pursuant to paragraph (3). For non-utility units, the baseline in the NAPAP Emissions Inventory, Version 2. The Administrator, in the Administrator's sole discretion, may exclude periods during which a unit is shutdown for a continuous period of 4 calendar months or longer, and make appropriate adjustments under this paragraph. Upon petition of the owner or operator of any unit, the Administrator may make appropriate baseline adjustments for accidents that caused prolonged outages.

''(B) For any other nonutility unit that is not included in the NAPAP Emissions Inventory, Version 2, or a corrected data base as established by the Administrator pursuant to paragraph (3), the baseline shall be the annual average quantity, in mmBtu consumed in fuel by that unit, as calculated pursuant to a method which the Administrator shall prescribe by regulation to be promulgated not later than 18 months after November 15, 1990.

''(C) The Administrator shall, upon application or on his own motion, by December 31, 1991, supplement data needed in support of this subpart and correct any factual errors in data from which affected Phase II units' baselines or actual 1985 emission rates have been calculated. Corrected data shall be used for purposes of issuing allowances under this subpart. Such corrections shall not be subject to judicial review, nor shall the failure of the Administrator to correct an alleged factual error in such reports be subject to judicial review.

''(5) The term 'basic Phase II allowance allocations' means:

''(A) For calendar years 2000 through 2009 inclusive, allocations of allowances made by the Administrator pursuant to section 412 and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i) and (j) of section 414.

''(B) For each calendar year beginning in 2010, allocations of allowances made by the Administrator pursuant to section 412 and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4) and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i) and (j) of section 414.

''(6) The term 'capacity factor' means the ratio between the actual electric output from a unit and the potential electric output from that unit.

''(7) The term 'commenced' as applied to construction of any new electric utility unit

means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

''(8) The term 'commenced commercial operation' means to have begun to generate electricity for sale.

''(9) The term 'construction' means fabrication, erection, or installation of an affected unit.

''(10) The term 'existing unit' means a unit (including units subject to section 111) that commenced commercial operation before November 15, 1990. Any unit that commenced commercial operation before November 15, 1990 which is modified, reconstructed, or repowered after November 15, 1990 shall continue to be an existing unit for the purposes of this subpart. For the purposes of this subpart, existing units shall not include simple combustion turbines, or units which serve a generator with a nameplate capacity of 25 MWe or less.

''(11) The term 'independent power producer' means any person who owns or operates, in whole or in part, one or more new independent power production facilities.

''(12) The term 'new independent power production facility' means a facility that—

''(A) is used for the generation of electric energy, 80 percent or more of which is sold at wholesale;

''(B) in nonrecourse project-financed (as such term is defined by the Secretary of Energy within 3 months of the date of the enactment of the Clean Air Act Amendments of 1990); and

''(C) is a new unit required to hold allowances under this subpart.

''(13) The term 'industrial source' means a unit that does not serve a generator that produces electricity, a 'non-utility unit' as defined in this section, or a process source.

''(14) The term 'life-of-the-unit, firm power contractual arrangement' means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of capacity and associated energy generated by a specified generating unit (or units) and pays its proportional amount of such unit's total costs, pursuant to a contract either—

''(A) for the life of the unit;

''(B) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

''(C) for a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the capacity and associated energy generated by the unit (or units) at the end of the period.

''(15) The term 'new unit' means a unit that commences commercial operation on or after November 15, 1990.

''(16) The term 'nonutility unit' means a unit other than a utility unit.

''(17) The term 'Phase II bonus allowance allocations' means, for calendar year 2000 through 2009, inclusive, and only for such years, allocations made by the Administrator pursuant to section 412, subsections (a)(2), (b)(2), (c)(4), (d)(3) (except as otherwise provided therein), and (h)(2) of section 414, and section 415.

''(18) The term 'qualifying phase I technology' means a technological system of continuous emission reduction which achieves a 90 percent reduction in emissions of sulfur dioxide from the emissions that would have resulted from the use of fuels which were not subject to treatment prior to combustion.

''(19) The term 'repowering' means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magneto-hydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

''(20) The term 'reserve' means any bank of allowances established by the Administrator under this subpart.

''(21)(A) The term 'utility unit' means—

''(i) a unit that serves a generator in any State that produces electricity for sale, or

''(ii) a unit that, during 1985, served a generator in any State that produced electricity for sale.

''(B) Notwithstanding subparagraph (A), a unit described in subparagraph (A) that—

''(i) was in commercial operations during 1985, but

''(ii) did not during 1985, serve a generator in any State that produced electricity for sale shall not be a utility unit for purposes of this subpart.

''(C) A unit that cogenerates steam and electricity is not a 'utility unit' for purposes of this subpart unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990 and supplies more than one-third of its potential electric output capacity of more than 25 megawatts electrical output to any utility power distribution system for sale.

''SEC. 412. ALLOWANCE ALLOCATION.

''(a) Except as provided in sections 414(a)(2), 415(a)(3), and 416, beginning January 1, 2000, the Administrator shall not allocate annual missions of sulfur dioxide from utility units in excess of 8.90 million tons except that the Administrator shall not to take into account unused allowances carried forward by owners and operators of affected units or by other persons holding such allowances, following the year for which they were allocated. If necessary to meeting he restrictions imposed in the preceding sentence, he Administrator shall reduce, pro rata, the basic Phase II allowance allocations for each unit subject to the requirements of section 414. Subject to the provisions of section 417, the Administrator shall allocate allowances for each affected until at an affected source annually, as provided in paragraphs (2) and(3) and section 404. Except as provided in sections 416, the removal of an existing affected unit or source from commercial operation at any time after November 15, 1990 (whether before or after January 1, 1995, or January 1, 2000), shall not terminate or otherwise affect the allocation of allowances pursuant to section 413 or 414 to which the unit is entitled. Prior to June 1, 1998, the Administrator shall publish a revised final statement of allowance allocations, subject to the provisions of section 414(a)(2).

''(b) NEW UTILITY UNITS.—

''(1) After January 1, 2000 and through December 31, 2007, it shall be unlawful for a new utility unit to emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit held for the unit by the unit's owner or operator.

''(2) Starting January 1, 2008, a new utility unit shall be subject to the prohibition in subsection (c)(3).

''(3) New utility units shall not be eligible for an allocation of sulfur dioxide allowances under subsection (a)(1), unless the unit is subject to the provisions of subsection (g)(2) or (3) of section 414. New utility units may obtain allowances from any person, in accordance with this title. The owner or operator of any new utility unit in violation of subsection (b)(1) or subsection(c)(3) shall be liable for fulfilling the obligations specified in section 406.

''(c) PROHIBITIONS.—

''(1) It shall be unlawful for any person to hold, use, or transfer any allowance allocated under this subpart, except in accordance with regulations promulgated by the Administrator.

''(2) For any year 1995 through 2007, it shall be unlawful for any affected unit to emit sulfur dioxide in excess of the number of allowances held for that unit for that year by the owner or operator of the unit.

''(3) Starting January 1, 2008, it shall be unlawful for the affected units at a source to emit a total amount of sulfur dioxide during the year in excess of the number of allowances held for the source for that year by the owner or operator of the source.

''(4) Upon the allocation of allowances under this subpart, the prohibition in paragraphs (2) and (3) shall supersede any other emission limitation applicable under this subpart to the units for which such allowances are allocated.

''(d) In order to insure electric reliability, regulations establishing a system for issuing, recording, and tracking allowances under section 403(b) and this subpart shall not prohibit or affect temporary increases and decreases in emissions within utility systems, power pools, or utilities entering into allowance pool agreements, that result from their operations, including emergencies and central dispatch, and such temporary emissions increases and decreases shall not require transfer of allowances among units nor shall it require recording. The owners or operators of such units shall act through a designated representative. Notwithstanding the preceding sentence, the total tonnage of emissions in any calendar year (calculated at the end thereof) from all units in such a utility system, power pool, or allowance pool agreements shall not exceed the total allowances for such units for the calendar year concerned, including for calendar years after 2007, allowances held for such units by the owner or operator of the sources where the units are located.

''(e) Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, an affected unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, the certificate of representation required under section 404(f) shall state—

''(1) that allowances under this subpart and the proceeds of transactions involving such allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, or

''(2) if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances under this subpart and the proceeds of transactions involving such allowances will be deemed to be held or distributed in accordance with the contract.

A passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit shall not be deemed to be a holder of a legal, equitable, leasehold, or contractual interest for the purpose of holding or distributing allowances as provided in this subsection, during either

the term of such leasehold or thereafter, unless expressly provided for in the leasehold agreement. Except as otherwise provided in this subsection, where all legal or equitable title to or interest in an affected unit is held by a single person, the certification shall state that all allowances under this subpart received by the unit are deemed to be held for that person.

"SEC. 413. PHASE I SULFUR DIOXIDE REQUIREMENTS.

''(a) EMISSION LIMITATIONS.—

''(1) After January 1, 1995, each source that includes one or more affected units listed in table A is an affected source under this section. After January 1, 1995, it shall be unlawful for any affected unit (other than an eligible phase I unit under section 413(d)(2)) to emit sulfur dioxide in excess of the tonnage limitation stated as a total number of allowances in table A for phase I, unless—

''(A) the emissions reduction requirements applicable to such unit have been achieved pursuant to subsection (b) or (d), or

''(B) the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions, except that, after January 1, 2000, the emissions limitations established in this section shall be superseded by those established in section 414. The owner or operator of any unit in violation of this section be fully liable for such violation including, but not limited to, liability for fulfilling the obligations specified in section 406.

''(2) Not later than December 31, 1991, the Administrator shall determine the total tonnage of reductions in the emissions of sulfur dioxide from all utility units in calendar year 1995 that will occur as a result of compliance with the emissions limitation requirements of this section, and shall establish a reserve of allowances equal in amount to the number of tons determined thereby not to exceed a total of 3.50 million tons. In making such a determination, the Administrator shall compute for each unit subject to the emissions limitation requirements of this section the difference between—

''(A) the product of its baseline multiplied by the lesser of each unit's allowable 1985 emissions rate and its actual 1985 emissions rate, divided by 2,000, and

''(B) the product of each unit's baseline multiplied by 2.50 lbs/mmBtu divided by 2,000, and sum the computations. The Administrator shall adjust the foregoing calculation to reflect projected calendar year 1995 utilization of the units subject to the emissions limitations of this subpart that the Administrator finds would have occurred in the absence of the imposition of such requirements. Pursuant to subsection (d), the Administrator shall allocate allowances from the reserve established hereunder until the earlier of such time as all such allowances in the reserve are allocated or December 31, 1999.

''(3) In addition to allowances allocated pursuant to paragraph (1), in each calendar year beginning in 1995 and ending in 1999, inclusive, the Administrator shall allocate for each unit on Table A that is located in the States of Illinois, Indiana, or Ohio (other than units at Kyger Creek, Clifty Creek and Joppa Steam), allowances in an amount equal to 200,000 multiplied by the unit's pro rata share of the total number of allowances allocated for all units on Table A in the 3 States (other than units at Kyger Creek, Clifty Creek, and Joppa Steam) pursuant to paragraph (1). Such allowances shall be excluded from the calculation of the reserve under paragraph (2).

''(b) SUBSTITUTIONS.—The owner or operator of an affected unit under subsection (a) may include in its section 404 permit application and proposed compliance plan a proposal to reassign, in whole or in part, the affected unit's sulfur dioxide reduction requirements to any other unit(s) under the control of such owner or operator. Such proposal shall specify—

''(1) the designation of the substitute unit or units to which any part of the reduction obligations of subsection (a) shall be required, in addition to, or in lieu of, any original affected units designated under such subsection;

''(2) the original affected unit's baseline, the actual and allowable 1985 emissions rate for sulfur dioxide, and the authorized annual allowance allocation stated in table A;

''(3) calculation of the annual average tonnage for calendar years 1985, 1986, and 1987, emitted by the substitute unit or units, based on the baseline for each unit, as defined in section 411(4), multiplied by the lesser of the unit's actual or allowable 1985 emissions rate;

''(4) the emissions rates and tonnage limitations that would be applicable to the original and substitute affected units under the substitution proposal;

''(5) documentation, to the satisfaction of the Administrator, that the reassigned tonnage limits will, in total, achieve the same or greater emissions reduction than would have been achieved by the original affected unit and the substitute unit or units without such substitution; and

''(6) such other information as the Administrator may require.

''(c) ADMINISTRATOR'S ACTION ON SUBSTITUTION PROPOSALS.—

''(1) The Administrator shall take final action on such substitution proposal in accordance with section 404(c) if the substitution proposal fulfills the requirements of this subsection. The Administrator may approve a substitution proposal in whole or in part and with such modifications or conditions as may be consistent with the orderly functioning of the allowance system and which will ensure the emissions reductions contemplated by this title. If a proposal does not meet the requirements of subsection (b), the Administrator shall disapprove it. The owner or operator of a unit listed in table A shall not substitute another unit or units without the prior approval of the Administrator.

''(2) Upon approval of a substitution proposal, each substitute unit, and each source with such unit, shall be deemed affected under this title, and the Administrator shall issue a permit to the original and substitute affected source and unit in accordance with the approved substitution plan and section 404. The Administrator shall allocate allowances for the original and substitute affected units in accordance with the approved substitution proposal pursuant to section 412. It shall be unlawful for any source or unit that is allocated allowances pursuant to this section to emit sulfur dioxide in excess of the emissions limitation provided for in the approved substitution permit and plan unless the owner or operator of each unit governed by the permit and approved substitution plan holds allowances to emit not less than the unit's total annual emissions. The owner or operator of any original or substitute affected unit operated in violation of this subsection shall be fully liable for such violation, including liability for fulfilling the obligations specified in section 406. If a substitution proposal is disapproved, the Administrator shall allocate allowances to the original affected unit or units in accordance with subsection (a).

''(d) ELIGIBLE PHASE I EXTENSION UNITS.—

''(1) The owner or operator of any affected unit subject to an emissions limitation requirement under this section may petition the Administrator in its permit application under section 404 for an extension of 2 years of the deadline for meeting such requirement, provided that the owner or operator of any such unit holds allowances to emit not less than the unit's total annual emissions for each of the 2 years of the period of extension. To qualify for such an extension, the affected unit must either employ a qualifying phase I technology, or transfer its phase I emissions reduction obligation to a unit employing a qualifying phase I technology. Such transfer shall be accomplished in accordance with a compliance plan, submitted and approved under section 404, that shall govern operations at all units included in the transfer, and that specifies the emissions reduction requirements imposed pursuant to this title.

''(2) Such extension proposal shall—

''(A) specify the unit or units proposed for designation as an eligible phase I extension unit;

''(B) provide a copy of an executed contract, which may be contingent upon the Administrator approving the proposal, for the design engineering, and construction of the qualifying phase I technology for the extension unit, or for the unit or units to which the extension unit's emission reduction obligation is to be transferred;

''(C) specify the unit's or units' baseline, actual 1985 emissions rate, allowable 1985 emissions rate, and projected utilization for calendar years 1995 through 1999;

''(D) require CEMS on both the eligible phase I extension unit or units and the transfer unit or units beginning no later than January 1, 1995; and

''(E) specify the emission limitation and number of allowances expected to be necessary for annual operation after the qualifying phase I technology has been installed.

''(3) The Administrator shall review and take final action on each extension proposal in order of receipt, consistent with section 404, and for an approved proposal shall designate the unit or units as an eligible phase I extension unit. The Administrator may approve an extension proposal in whole or in part, and with such modifications or conditions as may be necessary, consistent with the orderly functioning of the allowance system, and to ensure the emissions reductions contemplated by the subpart.

''(4) In order to determine the number of proposals eligible for allocations from the reserve under subsection (a)(2) and the number of the allowances remaining available after each proposal is acted upon, the Administrator shall reduce the total number of allowances remaining available in the reserve by the number of allowances calculated according to subparagraph (A), (B) and (C) until either no allowances remain available in the reserve for further allocation or all approved proposals have been acted upon. If no allowances remain available in the reserve for further allocation before all proposals have been acted upon by the Administrator, any pending proposals shall be disapproved. The Administrator shall calculate allowances equal to—

''(A) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1995 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000;

''(B) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1996 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000; and

''(C) the amount by which (i) the product of each unit's baseline multiplied by an emission rate of 1.20 lbs/mmBtu, divided by 2,000, exceeds (ii) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection multiplied by a factor of 3.

''(5) Each eligible Phase I extension unit shall receive allowances determined under subsection (a)(1) or (c) of this section. In addition, for calendar year 1995, the Administrator shall allocate to each eligible Phase I extension unit, from the allowance reserve created pursuant to subsection (a)(2), allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emission tonnage for calendar year 1995 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. In calendar year 1996, the Administrator shall allocate for each eligible unit, from the allowance reserve created pursuant to subsection (a)(2), allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emissions tonnage for calendar year 1996 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. It shall be unlawful for any source or unit subject to an approved extension plan under this subsection to emit sulfur dioxide in excess of the emissions limitations provided for in the permit and approved extension plan, unless the owner or operator of each unit governed by the permit and approved plan holds allowances to emit not less than the unit's total annual emissions.

''(6) In addition to allowances specified in paragraph (4), the Administrator shall allocate for each eligible Phase I extension unit employing qualifying Phase I technology, for calendar years 1997, 1998, and 1999, additional allowances, from any remaining allowances in the reserve created pursuant to subsection (a)(2), following the reduction in the reserve provided for in paragraph (4), not to exceed the amount by which (A) the product of each eligible unit's baseline times an emission rate of 1.20 lbs/mmBtu, divided by 2,000 exceeds (B) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection.

''(7) After January 1, 1997, in addition to any liability under this Act, including under section 406, if any eligible phase I extension unit employing qualifying phase I technology or any transfer unit under this subsection emits sulfur dioxide in excess of the annual tonnage limitation specified in the extension plan, as approved in paragraph (2) of this subsection, the Administrator shall, in the calendar year following such excess, deduct allowances equal to the amount of such excess from such unit's annual allowance allocation.

''(e)(1) In the case of a unit that receives authorization from the Governor of the State in which such unit is located to make reductions in the emissions of sulfur dioxide prior to calendar year 1995 and that is part of a utility system that meets the following requirements—

''(A) the total coal-fired generation within the utility system as a percentage of total system generation decreased by more than 20 percent between January 1, 1980, and December 31, 1985; and

''(B) the weighted capacity factor of all coal-fired units within the utility system averaged over the period from January 1, 1985, through December 31, 1987, was below 50 percent, the Administrator shall allocate allowances under this paragraph for the unit pursuant to this subsection. The Administrator shall allocate allowances for a unit that is an affected unit pursuant to section 414 (but is not also an affected unit under this section) and part of a utility system that includes 1 or more affected units under section 414 for reductions in the emissions of sulfur dioxide made during the period 1995–1999 if the unit meets the requirements of this subsection and the requirements of the preceding sentence, except that for the purposes of applying this subsection to any such unit, the prior year concerned as specified below, shall be any year after January 1, 1995 but prior to January 1, 2000.

''(2) In the case of an affected unit under this section described in subparagraph (A), the allowances allocated under this subsection for early reductions in any prior year may not exceed the amount which (A) the product of the unit's baseline multiplied by the unit's 1985 actual sulfur dioxide emission rate (in lbs. per mmBtu), divided by 2,000 exceeds (B) the allowances specified for such unit in Table A. In the case of an affected unit under section 414 described in subparagraph (A), the allowances awarded under this subsection for early reductions in any prior year may not exceed the amount by which (i) the product of the quality of fossil fuel consumed by the unit (in mmBtu) in the prior year multiplied by the lesser of 2.50 or the most stringent emission rate (in lbs. per mmBtu) applicable to the unit under the applicable implementation plan, divided by 2,000 exceeds (ii) the unit's actual tonnage of sulfur dioxide emission for the prior year concerned. Allowances allocated under this subsection for units referred to in subparagraph (A) may be allocated only for emission reductions achieved as a result of physical changes or changes in the method of operation made after November 15, 1990, including changes in the type or quality of fossil fuel consumed.

''(3) In no event shall the provisions of this paragraph be interpreted as an event of force majeure or a commercial impracticability or in any other way as a basis for excused nonperformance by a utility system under a coal sales contract in effect before November 15, 1990.

''TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)

State	Plant name	Generator	Phase I allowances
Alabama	Colbert	1	13,570
		2	15,310
		3	15,400
		4	15,410
		5	37,180
	E.C. Gaston	1	18,100
		2	18,540
		3	18,310
		4	19,280
		5	59,840
Florida	Big Bend	1	28,410
		2	27,100
		3	26,740
	Crist	6	19,200
		7	31,680
Georgia	Bowen	1	56,320
		2	54,770
		3	71,750
		4	71,740
	Hammond	1	8,780
		2	9,220
		3	8,910
		4	37,640
	J. McDonough	1	19,910
		2	20,600
	Wansley	1	70,770
		2	65,430
	Yates	1	7,210
		2	7,040
		3	6,950
		4	8,910
		5	9,410
		6	24,760
		7	21,480
Illinois	Baldwin	1	42,010
		2	44,420
		3	42,550
	Coffeen	1	11,790
		2	35,670
	Grand Tower	4	5,910
	Hennepin	2	18,410
	Joppa Steam	1	12,590
		2	10,770
		3	12,270
		4	11,360
		5	11,420
		6	10,620
	Kincaid	1	31,530
		2	33,810

"TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—Continued

State	Plant name	Generator	Phase I allowances
	Meredosia	3	13,890
	Vermilion	2	8,880
Indiana	Bailly	7	11,180
		8	15,630
	Breed	1	18,500
	Cayuga	1	33,370
		2	34,130
	Clifty Creek	1	20,150
		2	19,810
		3	20,410
		4	20,080
		5	19,360
		6	20,380
	E. W. Stout	5	3,880
		6	4,770
		7	23,610
	F. B. Culley	2	4,290
		3	16,970
	F. E. Ratts	1	8,330
		2	8,480
	Gibson	1	40,400
		2	41,010
		3	41,080
		4	40,320
	H.T. Pritchard	6	5,770
	Michigan City	12	23,310
	Petersburg	1	16,430
		2	32,380
	R. Gallagher	1	6,490
		2	7,280
		3	6,530
		4	7,650
	Tanners Creek	4	24,820
	Wabash River	1	4,000
		2	2,860
		3	3,750
		5	3,670
		6	12,280
	Warrick	4	26,980
Iowa	Burlington	1	10,710
	Des Moines	7	2,320
	George Neal	1	1,290
	M.L. Kapp	2	13,800
	Prairie Creek	4	8,180
	Riverside	5	3,990
Kansas	Quindaro	2	4,220
Kentucky	Coleman	1	11,250
		2	12,840
		3	12,340
	Cooper	1	7,450
		2	15,320
	E.W. Brown	1	7,110
		2	10,910
		3	26,100
	Elmer Smith	1	6,520
		2	14,410
	Ghent	1	28,410
	Green River	4	7,820
	H.L. Spurlock	1	22,780
	Henderson II	1	13,340
		2	12,310
	Paradise	3	59,170
	Shawnee	10	10,170
Maryland	Chalk Point	1	21,910
		2	24,330
	C.P. Crane	1	10,330
		2	9,230
	Morgantown	1	35,260
		2	38,480
Michigan	J.H. Campbell	1	19,280
		2	23,060
Minnesota	High Bridge	6	4,270
Mississippi	Jack Watson	4	17,910
		5	36,700
Missouri	Asbury	1	16,190
	James River	5	4,850
	Labadie	1	40,110
		2	37,710
		3	40,310
		4	35,940
	Montrose	1	7,390
		2	8,200
		3	10,090
	New Madrid	1	28,240
		2	32,480
	Sibley	3	15,580
	Sioux	1	22,570
		2	23,690
	Thomas Hill	1	10,250
		2	19,390
New Hampshire	Merrimack	1	10,190
		2	22,000
New Jersey	B.L. England	1	9,060
		2	11,720
New York	Dunkirk	3	12,600
		4	14,060
	Greenidge	4	7,540
	Milliken	1	11,170
		2	12,410
	Northport	1	19,810
		2	24,110
		3	26,480
	Port Jefferson	3	10,470
		4	12,330
Ohio	Ashtabula	5	16,740
	Avon Lake	8	11,650
		9	30,480
	Cardinal	1	34,270
		2	38,320
	Conesville	1	4,210
		2	4,890

''TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—Continued

State	Plant name	Generator	Phase I allowances
		3	5,500
		4	48,770
	Eastlake	1	7,800
		2	8,640
		3	10,020
		4	14,510
		5	34,070
	Edgewater	4	5.050
	Gen. J.M. Gavin	1	79,080
		2	80,560
	Kyger Creek	1	19,280
		2	18,560
		3	17,910
		4	18,710
		5	18,740
	Miami Fort	5	760
		6	11,380
		7	38,510
	Muskingum River	1	14,880
		2	14,170
		3	13,950
		4	11,780
		5	40,470
	Niles	1	6,940
		2	9,100
	Picway	5	4,930
	R.E. Burger	3	6,150
		4	10,780
		5	12,430
	W.H. Sammis	5	24,170
		6	39,930
		7	43,220
	W.C. Beckjord	5	8,950
		6	23,020
Pennsylvania	Armstrong	1	14,410
		2	15,430
	Brunner Island	1	27,760
		2	31,100
		3	53,820
	Cheswick	1	39,170
	Conemaugh	1	59,790
		2	66,450
	Hatfield's Ferry	1	37,830
		2	37,320
		3	40,270
	Martins Creek	1	12,660
		2	12,820
	Portland	1	5,940
		2	10,230
	Shawville	1	10,320
		2	10,320
		3	14,220
		4	14,070
	Sunbury	3	8,760
		4	11,450
Tennessee	Allen	1	15,320
		2	16,770
		3	15,670
	Cumberland	1	86,700
		2	94,840
	Gallatin	1	17,870
		2	17,310
		3	20,020
		4	21,260
	Johnsonville	1	7,790
		2	8,040
		3	8,410
		4	7,990
		5	8,240
		6	7,890
		7	8,980
		8	8,700
		9	7,080
		10	7,550
West Virginia	Albright	3	12,000
	Fort Martin	1	41,590
		2	41,200
	Harrison	1	48,620
		2	46,150
		3	41,500
	Kammer	1	18,740
		2	19,460
		3	17,390
	Mitchell	1	43,980
		2	45,510
	Mount Storm	1	43,720
		2	35,580
		3	42,430
Wisconsin	Edgewater	4	24,750
	La Crosse/Genoa	3	22,700
	Nelson Dewey	1	6,010
		2	6,680
	N. Oak Creek	1	5,220
		2	5,140
		3	5,370
		4	6,320
	Pulliam	8	7,510
	S. Oak Creek	5	9.670
		6	12,040
		7	16,180
		8	15,790

''(f) ENERGY CONSERVATION AND RENEWABLE ENERGY.—

''(1) DEFINITIONS.—As used in this subsection:

''(A) QUALIFIED ENERGY CONSERVATION MEASURE.—The term 'qualified energy conservation measure' means a cost effective measure, as identified by the Administrator in consultation with the Secretary of Energy, that increases the efficiency of the use of electricity provided by an electric utility to its customers.

''(B) QUALIFIED RENEWABLE ENERGY.—The term 'qualified renewable energy' means energy derived from biomass, solar, geothermal, or wind as identified by the Administrator in consultation with the Secretary of Energy.

''(C) ELECTRIC UTILITY.—The term 'electric utility' means any person, State agency, or Federal agency, which sells electric energy.

''(2) ALLOWANCES FOR EMISSIONS AVOIDED THROUGH ENERGY CONSERVATION AND RENEWABLE ENERGY.—

''(A) IN GENERAL.—The regulations under paragraph (4) of this subsection shall provide that for each ton of sulfur dioxide emissions avoided by an electric utility, during the applicable period, through the use of qualified energy conservation measures or qualified renewable energy, the Administrator shall allocate a single allowance to such electric utility, on a first-come-first-served basis from the Conservation and Renewable Energy Reserve established under subsection (g), up to a total of 300,000 allowances for allocation from such Reserve.

''(B) REQUIREMENTS FOR ISSUANCE.—The Administrator shall allocate allowances to an electric utility under this subsection only if all of the following requirements are met:

''(i) Such electric utility is paying for the qualified energy conservation measures or qualified renewable energy directly or through purchase from another person.

''(ii) The emissions of sulfur dioxide avoided through the use of qualified energy conservation measures or qualified renewable energy are quantified in accordance with regulations promulgated by the Administrator under this subsection.

''(iii)(I) Such electric utility has adopted and is implementing a least cost energy conservation and electric power plan which evaluates a range of resources, including new power supplies, energy conservation, and renewable energy resources, in order to meet expected future demand at the lowest system cost.

''(II) The qualified energy conservation measures or qualified renewable energy, or both, are consistent with that plan.

''(III) Electric utilities subject to the jurisdiction of a State regulatory authority must have such plan approved by such authority. For electric utilities not subject to the jurisdiction of a State regulatory authority such plan shall be approved by the entity with rate-making authority for such utility.

''(iv) In the case of qualified energy conservation measures undertaken by a State regulated electric utility, the Secretary of Energy certifies that the State regulatory authority with jurisdiction over the electric rates of such electric utility has established rates and charges which ensure that the net income of such electric utility after implementation of specific cost effective energy conservation measures is at least as high as such net income would have been if the energy conservation measures had not been implemented. Upon the date of any such certification by the Secretary of Energy, all allowances which, but for this paragraph, would have been allocated under subparagraph (B) before such date, shall be allocated to the electric utility. This clause is not a requirement for qualified renewable energy.

''(v) Such utility or any subsidiary of the utility's holding company owns or operates at least one affected unit.

''(C) PERIOD OF APPLICABILITY.—Allowances under this subsection shall be allocated only with respect to kilowatt hours of electric energy saved by qualified energy conservation measures or generated by qualified renewable energy after January 1, 1992, and before the earlier of (i) December 31, 2000, or (ii) the date on which any electric utility steam generating unit owned or operated by the electric utility to which the allowances are allocated becomes subject to this subpart (including those sources that elect to become affected by this title, pursuant to section 417).

''(D) DETERMINATION OF AVOIDED EMISSIONS.—

''(i) APPLICATION.—In order to receive allowances under this subsection, an electric utility shall make an application which—

''(I) designates the qualified energy conservation measures implemented and the qualified renewable energy sources used for purposes of avoiding emissions;

''(II) calculates, in accordance with subparagraphs (F) and (G), the number of tons of emissions avoided by reason of the implementation of such measures or the use of such renewable energy sources; and

''(III) demonstrates that the requirements of subparagraph (B) have been met. Such application for allowances by a State-regulated electric utility shall require approval by the State regulatory authority with jurisdiction over such electric utility. The authority shall review the application for accuracy and compliance with this subsection and the rules under this subsection. Electric utilities whose retail rates are not subject to the jurisdiction of a State regulatory authority shall apply directly to the Administrator for such approval.

''(E) AVOIDED EMISSIONS FROM QUALIFIED ENERGY CONSERVATION MEASURES.—For the purposes of this subsection, the emission tonnage deemed avoided by reason of the implementation of qualified energy conservation measures for any calendar year shall be a tonnage equal to the product of multiplying—

''(i) the kilowatt hours that would otherwise have been supplied by the utility during such year in the absence of such qualified energy conservation measures, by

''(ii) 0.004, and dividing by 2,000.

''(F) AVOIDED EMISSIONS FROM THE USE OF QUALIFIED RENEWABLE ENERGY.—The emissions tonnage deemed avoided by reason of the use of qualified renewable energy by an electric utility for any calendar year shall be a tonnage equal to the product of multiplying—(i) the actual kilowatt hours generated by, or purchased from, qualified renewable energy, by (ii) 0.004, and dividing by 2,000.

''(G) PROHIBITIONS.—

''(i) No allowances shall be allocated under this subsection for the implementation of programs that are exclusively informational or educational in nature.

''(ii) No allowances shall be allocated for energy conservation measures or renewable energy that were operational before January 1, 1992.

''(3) SAVINGS PROVISION.—Nothing in this subsection precludes a State or State regulatory authority from providing additional incentives to utilities to encourage investment in demand-side resources.

''(4) REGULATIONS.—The Administrator shall implement this subsection under 40 CFR part 73 (2002), amended as appropriate by the Administrator. Such regulations shall list energy conservation measures and renewable energy sources which may be treated as qualified energy conservation measures and qualified renewable energy for purposes of this subsection. Allowances shall only be allocated if all requirements of this subsection and the rules promulgated to implement this subsection are complied with. The Administrator shall review the determinations of each State regulatory authority under this subsection to encourage consistency from electric utility and from State-to-State in accordance with the Administrator's rules. The Administrator shall publish the findings of this review no less than annually.

''(g) CONSERVATION AND RENEWABLE ENERGY RESERVE.—The Administrator shall establish a Conservation and Renewable Energy Reserve under this subsection. Beginning on January 1, 1995, the Administrator may allocate from the Conservation and Renewable Energy Reserve an amount equal to a total of 300,000 allowances for emissions of sulfur dioxide pursuant to section 411. In order to provide 300,000 allowances for such reserve, in each year beginning in calendar year 2000 and until calendar year 2009, inclusive, the Administrator shall reduce each unit's basic Phase II allowance allocation on the basis of its pro rata share of 30,000 allowances. Notwithstanding the prior sentence, if allowances remain in the reserve one year after the date of enactment of the Clear Skies Act of 2003, the Administrator shall allocate such allowances for affected units under section 414 on a pro rata basis. For purposes of this subsection, for any unit subject to the emissions limitation requirements of section 414, the term 'pro rata basis' refers to the ratio which the reductions made in such unit's allowances in order to establish the reserve under this subsection bears to the total of such reductions for all such units.

''(h) ALTERNATIVE ALLOWANCE ALLOCATION FOR UNITS IN CERTAIN UTILITY SYSTEMS WITH OPTIONAL BASELINE.—

''(1) OPTIONAL BASELINE FOR UNITS IN CERTAIN SYSTEMS.—In the case of a unit subject to the emissions limitation requirements of this section which (as of November 15, 1990)—

''(A) has an emission rate below 1.0 lbs/mmBtu,

''(B) has decreased its sulfur dioxide emissions rate by 60 percent or greater since 1980, and

''(C) is part of a utility system which has a weighted average sulfur dioxide emissions rate for all fossil fueled-fired units below 1.0 lbs/mmBtu, at the election to the owner or operator of such unit, the unit's baseline may be calculated

''(i) as provided under section 411, or

''(ii) by utilizing the unit's average annual fuel consumption at a 60 percent capacity factor. Such election shall be made no later than March 1, 1991.

''(2) ALLOWANCE ALLOCATION.—Whenever a unit referred to in paragraph (1) elects to calculate its baseline as provided in clause (ii) of paragraph (1), the Administrator shall allocate allowances for the unit pursuant to section 412(a), this section, and section 414 (as Basic Phase II allowance allocations) in an amount equal to the baseline selected multiplied by the lower of the average annual emission rate for such unit in 1989, or 1.0 lbs./mmBtu. Such allowance allocation shall be in lieu of any allocation of allowances under this section and section 414.

''SEC. 414. PHASE II SULFUR DIOXIDE REQUIREMENTS.

''(a) APPLICABILITY.—

''(1) After January 1, 2000, each existing utility unit as provided below is subject to the limitations or requirements of this section. Each utility unit subject to an annual sulfur dioxide tonnage emission limitation under this section is an affected unit under this subpart. Each source that includes one or more affected units is an affected source. In the case of an existing unit that was not in operation during calendar year 1985, the emission rate for a calendar year after 1985, as determined by the Administrator, shall be used in lieu of the 1985 rate. The owner or operator of any unit operated in violation of this section shall be fully liable under this Act for fulfilling the obligations specified in section 406.

''(2) In addition to basic Phase II allowance allocations, in each year beginning in calendar year 2000 and ending in calendar year 2009, inclusive, the Administrator shall allocate up to 530,000 Phase II bonus allowances pursuant to subsections (b)(2),(c)(4), (d)(3)(A) and (B), and (h)(2) of this section and section 415.

''(3) In addition to basic Phase II allowances allocations and Phase II bonus allowance allocations, beginning January 1, 2000, the Administrator shall allocate for each unit listed on Table A in section 413 (other than units at Kyger Creek, Clifty Creek, and Joppa Stream) and located in the States of Illinois, Indiana, Ohio, Georgia, Alabama, Missouri, Pennsylvania, West Virginia, Kentucky, or Tennessee allowances in an amount equal to 50,000 multiplied by the unit's pro rata share of the total number of basic allowances allocated for all units listed on Table A (other than units at Kyger Creek, Clifty Creek, and Joppa Stream). Allowances allocated pursuant to this paragraph shall not be subject to the 8,900,000 ton limitation in section 412(a).

''(b) UNITS EQUAL TO, OR ABOVE, 75 MWE AND 1.20 LBS/MMBTU.—

''(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for any existing utility unit that serves a generator with nameplate capacity equal to, or greater, than 75 MWe and an actual 1985 emission rate equal to or greater than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007,

unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(2) In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate greater than 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

''(3) After January 1, 2000, it shall be unlawful for any existing utility unit with an actual 1985 emissions rate equal to or greater than 1.20 lbs/mmBtu whose annual average fuel consumption during 1985, 1986, and 1987 on a Btu basis exceeded 90 percent in the form of lignite coal which is located in a State in which, as of July 1, 1989, no county or portion of a county was designated nonattainment under section 107 of this Act for any pollutant subject to the requirements of section 109 of this Act to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(4) After January 1, 2000, the Administrator shall allocate annually for each unit, subject to the emissions limitation requirements of paragraph (1), which is located in a State with an installed electrical generating capacity of more than 30,000,000 kw in 1988 and for which was issued a prohibition order or a proposed prohibition order (from burning oil), which unit subsequently converted to coal between January 1, 1980 and December 31, 1985, allowances equal to the difference between (A) the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of its actual or allowable emissions rate during the first full calendar year after conversion, divided by 2,000, and (B) the number of allowances allocated for the unit pursuant to paragraph (1): *Provided*, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of five thousand. If necessary to meeting the restriction imposed in the preceding sentence the Administrator shall reduce, pro rata, the annual allowances allocated for each unit under this paragraph.

''(c) COAL OR OIL-FIRED UNITS BELOW 75 MWE AND ABOVE 1.20 LBS/MMBTU.—

''(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, equal to, or greater than, 250 MWe to exceed an annual sulfur dioxide emissions limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(2) After January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu (excluding units subject to section 111 of the Act or to a federally enforceable emissions limitation for sulfur dioxide equivalent to an annual rate of less than 1.20 lbs/mmBtu) and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, less than 250 MWe, to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(3) After January 1, 2000 it shall be unlawful for any existing utility unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which became operational on or before December 31, 1965, which is owned by a utility operating company with, as of December 31, 1989, a total fossil fuel steam-electric generating capacity greater than 250 MWe, and less than 450 MWe which serves fewer than 78,000 electrical customers as of November 15, 1990, to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by the lesser of its actual or allowable 1985 emission rate, divided by 2,000, unless the owner or operator holds allowances to emit not less than the units total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(4) In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, inclusive, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

''(5) After January 1, 2000, is shall be unlawful for any existing unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which is part of an electric utility system which, as of November 15, 1990—

''(A) has at least 20 percent of its fossil-fuel capacity controlled by flue gas desulfurization devices,

''(B) has more than 10 percent of its fossil-fuel capacity consisting of coal-fired unites of less than 75 MWe, and

''(C) has large units (greater than 400 MWe) all of which have difficult or very difficult FGD Retrofit Cost Factors (according to the Emissions and the FGD Retrofit Feasibility at the 200 Top Emitting Generating Stations, prepared for the United States Environmental Protection Agency on January 10, 1986) to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 2.5 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the project of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds for use allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(d) COAL-FIRED UNITS BELOW 1.20 LBS/MMBTU.—

''(1) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is less than 0.60 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by—

''(A) the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate, and

''(B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(2) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is equal to, or greater than, 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(3)(A) In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which—

''(i) the product of the lesser of 0.60 lbs.mmBtu or the unit's allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds

''(ii) the number of allowances allocated for the unit pursuant to paragraph (1) and section 403(a)(1) as basic Phase II allowance allocations.

''(B) In addition to allowances allocated pursuant to paragraph (2) and section 412(a) as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (2) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which—

''(i) the product of the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds

''(ii) the number of allowances allocated for the unit pursuant to paragraph (2) and section 412(a) as basic Phase II allowance allocations.

''(C) An operating company with units subject to the emissions limitation requirements of this subsection may elect the allocation of allowances as provided under subparagraphs (A) and (B). Such election shall apply to the annual allowance allocation for each and every unit in the operating company subject to the emissions limitation requirements of this subsection. The Administrator shall allocate allowances pursuant to subparagraphs (A) and (B) only in accordance with this subparagraph.

''(4) Notwithstanding any other provision of this section, at the election of the owner or operator, after January 1, 2000, the Administrator shall allocate in lieu of allocation, pursuant to paragraph (1), (2), (3), (5), or (6), allowances for a unit subject to the emissions limitation requirements of this subsection which commenced commercial operation on or after January 1, 1981 and before December 31, 1985, which was subject to, and in compliance with, section 111 of the Act in an amount equal to the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowable 1985 emissions rate, divided by 2,000.

''(5) For the purposes of this section, in the case of an oil- and gas-fired unit which has been awarded a clean coal technology demonstration grant as of January 1, 1991, by the United States Department of Energy, beginning January 1, 2002, the Administrator shall allocate for the unit allowances in an amount equal to the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

''(e) OIL AND GAS-FIRED UNITS EQUAL TO OR GREATER THAN 0.60 LBS/MMBTU AND LESS THAN 1.20 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is equal to, or greater than, 0.60 lbs/mmBtu, but less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by (A) the lesser of the unit's allowable 1985 emissions rate or its actual 1985 emissions rate and (B) a numerical factor of 120 percent divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(f) OIL AND GAS-FIRED UNITS LESS THAN 0.60 LBS/MMBTU.—

''(1) After January 1, 2000, it shall be unlawful for any oil and gas-fired existing utility unit the lesser of whose actual or allowance 1985 emission rate is less than 0.60 lbs/mmBtu and whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis was 90 percent or less in the form of natural gas to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by—

''(A) the lesser of 0.60 lbs/mmBtu or the unit's allowance 1985 emissions, and

''(B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007,

unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(2) In addition to allowances allocated pursuant to paragraph (1) as basic Phase II allowance allocations and section 412(a), beginning January 1, 2000, the Administrator shall, in the case of any unit operated by a utility that furnishes electricity, electric energy, steam, and natural gas within an area consisting of a city and 1 contiguous county, and in the case of any unit owned by a State authority, the output of which unit is furnished within that same area consisting of a city and 1 contiguous county, the Administrator shall allocate for each unit in the utility its pro rata share of 7,000 allowances and for each unit in the State authority its pro rata share of 2,000 allowances.

''(g) UNITS THAT COMMENCE OPERATION BETWEEN 1986 AND DECEMBER 31, 1995.—

''(1) After January 1, 2000, it shall be unlawful for any utility unit that has commenced commercial operation on or after January 1, 1986, but not later than September 30, 1990 to exceed an annual tonnage emission limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowance 1985 sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(2) After January 1, 2000, the Administrator shall allocate allowances pursuant to section 411 to each unit which is listed in table B of this paragraph in an annual amount equal to the amount specified in table B.

''TABLE B

Unit	Allowances
Brandon Shores	8,907
Miller 4	9,197
TNP One 2	4,000
Zimmer 1	18,458
Spruce 1	7,647
Clover 1	2,796
Clover 2	2,796
Twin Oak 2	1,760
Twin Oak 1	9,158
Cross 1	6,401
Malakoff 1	1,759

Notwithstanding any other paragraph of this subsection, for units subject to this paragraph, the Administrator shall not allocate allowances pursuant to any other paragraph of this subsection, provided that the owner or operator of a unit listed on Table B may elect an allocation of allowances under another paragraph of this subsection in lieu of an allocation under this paragraph.

''(3) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that commences commercial operation, or has commenced commercial operation, on or after October 1, 1990, but not later than December 31, 1992 allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

''(4) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that has commenced construction before December 31, 1990 and that commences commercial operation between January 1, 1993 and December 31, 1995, allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

''(5) After January 1, 2000, it shall be unlawful for any existing utility unit that has completed conversion from predominantly gas fired existing operation to coal fired operation between January 1, 1985 and December 31, 1987, for which there has been allocated a proposed or final prohibition order pursuant to section 301(b) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C.

8301 et seq, repealed 1987) to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 1.20 lbs/mmBtu or the unit's allowable 1987 sulfur dioxide emissions rate, divided by 2,000, unless the owner or operator of such unit has obtained allowances equal to its actual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(6) Unless the Administrator has approved a designation of such facility under section 417, the provisions of this subpart shall not apply to a 'qualifying small power production facility' or 'qualifying cogeneration facility' (within the meaning of section 3(17)(C) or 3(18)(B) of the Federal Power Act) or to a 'new independent power production facility' if, as of November 15, 1990—

''(A) an applicable power sales agreement has been executed;

''(B) the facility is the subject of a State regulatory authority order requiring an electric utility to enter into a power sales agreement with, purchase capacity from, or (for purposes of establishing terms and conditions of the electric utility's purchase of power) enter into arbitration concerning, the facility;

''(C) an electric utility has issued a letter of intent or similar instrument committing to purchase power from the facility at a previously offered or lower price and a power sales agreement is executed within a reasonable period of time; or

''(D) the facility has been selected as a winning bidder in a utility competitive bid solicitation.

''(h) OIL AND GAS-FIRED UNITS LESS THAN 10 PERCENT OIL CONSUMED.—

''(1) After January 1, 2000, it shall be unlawful for any oil- and gas-fired utility unit whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis exceeded 90 percent in the form of natural gas to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the unit's actual 1985 emissions rate divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions or, for a year after 2007, unless the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

''(2) In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

''(3) In addition to allowances allocated pursuant to paragraph (1) and section 412(a), beginning January 1, 2010, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

''(i) UNITS IN HIGH GROWTH STATES.—

''(1) In addition to allowances allocated pursuant to this section and section 412(a) as basic Phase II allowance allocations, beginning January 1, 2000, the Administrator shall allocate annually allowances for each unit, subject to an emissions limitation requirement under this section, and located in a State that—

''(A) has experienced a growth in population in excess of 25 percent between 1980 and 1988 according to State Population and Household Estimates, With Age, Sex, and Components of Change: 1981–1988 allocated by the United States Department of Commerce, and

''(B) had an installed electrical generating capacity of more than 30,000,000 kw in 1988, in an amount equal to the difference between (A) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of this section applicable to the unit adjusted to reflect the unit's annual average fuel consumption on a Btu basis of any three consecutive calendar years between 1980 and 1989 (inclusive) as elected by the owner or operator and (B) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of this section: *Provided,* That the number of allowances allocated pursuant to this subsection shall not exceed an annual total of 40,000. If necessary to meeting the 40,000 allowance restriction imposed under this subsection the Administrator shall reduce, pro rata, the additional annual allowances allocated to each unit under this subsection.

''(2) Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 403(a)(1) as basic Phase II allowance allocations, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of subsection (b)(1)—

''(A) the lesser of whose actual or allowable 1980 emissions rate has declined by 50 percent or more as of November 15, 1990,

''(B) whose actual emissions rate is less than 1.2 lbs/mmBtu as of January 1, 2000,

''(C) which commenced operation after January 1, 1970,

''(D) which is owned by a utility company whose combined commercial and industrial kilowatt-hour sales have increased by more than 20 percent between calendar year 1980 and November 15, 1990, and

''(E) whose company-wide fossil-fuel sulfur dioxide emissions rate has declined 40 percent or more from 1980 to 1988, allowances in an amount equal to the difference between—

''(i) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1) adjusted to reflect the unit's annual average fuel consumption on a Btu basis for any three consecutive years between 1980 and 1989 (inclusive) as elected by the owner or operator, and

''(ii) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1): *Provided,* That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of 5,000. If necessary to meeting the 5,000 allowance restriction imposed in the last clause of the preceding sentence the Administrator shall reduce, pro rata, the additional allowances allocated to each unit pursuant to this paragraph.

''(j) CERTAIN MUNICIPALLY OWNED POWER PLANTS.—Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 412(a) as basic Phase II allowance allocations, the Administrator shall allocate annually for each existing municipally owned oil and gas-fired utility unit with nameplate capacity equal to, or less than, 40 MWe, the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is less than 1.20 lbs/mmBtu, allowances in an amount equal to the product of the unit's annual fuel consumption on a Btu basis at a 60 percent capacity factor multiplied by the lesser of its allowable 1985 emission rate or its actual 1985 emission rate, divided by 2,000.

''SEC. 415. ALLOWANCES FOR STATES WITH EMISSIONS RATES AT OR BELOW 0.80 LBS/MMBTU.

''(a) ELECTION OF GOVERNOR.—In addition to basic Phase II allowance allocations, upon the election of the Governor of any State, with a 1985 statewide annual sulfur dioxide emissions rate equal to or less than, 0.80 lbs/mmBtu, averaged over all fossil fuel-fired utility steam generating units, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate, in lieu of other Phase II bonus allowance allocations, allowances from the reserve created pursuant to section 414(a)(2) to all such units in the State in an amount equal to 125,000 multiplied by the unit's pro rata share of electricity generated in calendar year 1985 at fossil fuel-fired utility steam units in all States eligible for the election.

''(b) NOTIFICATION OF ADMINISTRATOR.—Pursuant to section 412(a), each Governor of a State eligible to make an election under paragraph (a) shall notify the Administrator of such election. In the event that the Governor of any such State fails to notify the Administrator of the Governor's elections, the Administrator shall allocate allowances pursuant to section 414.

''(c) ALLOWANCES AFTER JANUARY 1, 2010.—After January 1, 2010, the Administrator shall allocate allowances to units subject to the provisions of this section pursuant to section 414.

''SEC. 416. ELECTION FOR ADDITIONAL SOURCES.

''(a) APPLICABILITY.—The owner or operator of any unit that is not, nor will become, an affected unit under section 412(b), 413, or 414, that emits sulfur dioxide, may elect to designate that unit or source to become an affected unit and to receive allowances under this subpart. An election shall be submitted to the Administrator for approval, along with a permit application and proposed compliance plan in accordance with section 404. The Administrator shall approve a designation that meets the requirements of this section, and such designated unit shall be allocated allowances, and be an affected unit for purposes of this subpart.

''(b) ESTABLISHMENT OF BASELINE.—The baseline for a unit designated under this section shall be established by the Administrator by regulation, based on fuel consumption and operating data for the unit for calendar years 1985, 1986, and 1987, or if such data is not available, the Administrator may prescribe a baseline based on alternative representative data.

''(c) EMISSION LIMITATIONS.—

''(1) For a unit for which an election, along with a permit application and compliance plan, is submitted to the Administrator under paragraph (a) before January 1, 2002, annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate in lbs/mmBtu, or if the unit did not operate in 1985, by the lesser of the unit's actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator), divided by 2,000.

''(2) For a unit for which an election, along with a permit application and compliance plan, is submitted to the Administrator under paragraph (a) on or after January 1, 2002, annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate in lbs/mmBtu, or, if the unit did not operate in 1985, by the lesser of the unit's actual or allowable emission rate for a calendar year

after 1985 (as determined by the Administrator), divided by 4,000.

''(d) ALLOWANCES AND PERMITS.—The Administrator shall issue allowances to an affected unit under this section in an amount equal to the emissions limitation calculated under subsection (c), in accordance with section 412. Such allowance may be used in accordance with, and shall be subject to, the provisions of section 412. Affected sources under this section shall be subject to the requirements of sections 404, 405, 406, and 412.

''(e) LIMITATION.—Any unit designated under this section shall not transfer or bank allowances produced as a result of reduced utilization or shutdown, except that, such allowances may be transferred or carried forward for use in subsequent years to the extent that the reduced utilization or shutdown results from the replacement of thermal energy from the unit designated under this section, with thermal energy generated by any other unit or units subject to the requirements of this subpart, and the designated unit's allowances are transferred or carried forward for use at such other replacement unit or units. In no case may the Administrator allocate to a source designated under this section allowances in an amount greater than the emissions resulting from operation of the source in full compliance with the requirements of this Act. No such allowances shall authorize operation of a unit in violation of any other requirements of this Act.

''(f) IMPLEMENTATION.—The Administrator shall implement this section under 40 CFR part 74 (2002), amended as appropriate by the Administrator.

''SEC. 417. AUCTIONS, RESERVE.

''(a) SPECIAL RESERVE OF ALLOWANCES.—For purposes of establishing the Special Allowance Reserve, the Administrator shall withhold—

''(1) 2.8 percent of the allocation of allowances for each year from 1995 through 1999 inclusive; and

''(2) 2.8 percent of the basic Phase II allowance allocation of allowances for each year beginning in the year 2000

which would (but for this subsection) be issued for each affected unit at an affected source. The Administrator shall record such withholding for purposes of transferring the proceeds of the allowance sales under this subsection. The allowances so withheld shall be deposited in the Reserve under this section.

''(b) AUCTION SALES.—

''(1) SUBACCOUNT FOR AUCTIONS.—The Administrator shall establish an Auction Subaccount in the Special Reserve established under this section. The Auction Subaccount shall contain allowances to be sold at auction under this section in the amount of 150,000 tons per year for each year from 1995 through 1999, inclusive and 250,000 tons per year for each year from 2000 through 2009, inclusive.

''(2) ANNUAL AUCTIONS.—Commencing in 1993 and in each year thereafter until 2010, the Administrator shall conduct auctions at which the allowances referred to in paragraph (1) shall be offered for sale in accordance with regulations promulgated by the Administrator. The allowances referred to in paragraph (1) shall be offered for sale at auction in the amounts specified in table C. The auction shall be open to any person. A person wishing to bid for such allowances shall submit (by a date set by the Administrator) to the Administrator (on a sealed bid schedule provided by the Administrator) offers to purchase specified numbers of allowance sat specified prices. Such regulations shall specify that the auctioned allowances shall be allocated and sold on the basis of bid price, starting with the highest-priced bid and continuing until all allowances for sale at such auction have been allocated. The regulations shall not permit that a minimum price be set for the purchase of withheld allowances. Allowances purchased at the auction may be used for any purpose and at any time after the auction, subject to the provisions of this subpart and subpart 2.

''TABLE C.—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION

Year of sale	Spot auction (same year)	Advance auction
1993	50,000*	100,000
1994	50,000*	100,000
1995	50,000*	100,000
1996	150,000	100,000
1997	150,000	100,000
1998	150,000	100,000
1999	150,000	100,000
2000	125,000	125,000
2001	125,000	125,000
2002	125,000	125,000
2003	125,000	0
2004–2009	125,000	0

Allowances sold in the spot sale in any year are allowances which may be used only in that year (unless banked for use in a later year), except as otherwise noted. Allowances sold in the advance auction in any year are allowances which may only be used in the 7th year after the year in which they are first offered for sale (unless banked for use in a later year).

*Available for use only in 1995 (unless banked for use in a later year).

''(3) PROCEEDS.—

''(A) TRANSFER.—Notwithstanding section 3302 of title 31 of the United States Code or any other provision of law, within 90 days of receipt, the Administrator shall transfer the proceeds from the auction under this section, on a pro rata basis, to the owners or operators of the affected units at an affected source from whom allowances were withheld under subsection (b). No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

''(B) RETURN.—At the end of each year, any allowances offered for sale but not sold at the auction shall be returned without charge, on a pro rata basis, to the owner or operator of the affected units from whose allocation the allowances were withheld. With 170 days after the date of enactment of the Clear Skies Act of 2003, any allowance withheld under paragraph (a)(2) but not offered for sale at an auction shall be returned without charge, on a pro rata basis, to the owner or operator of the affected units from whose allocation the allowances were withheld.

''(4) RECORDING BY EPA.—The Administrator shall record and publicly report the nature, prices and results of each auction under this subsection, including the prices of successful bids, and shall record the transfers of allowances as a result of each auction in accordance with the requirements of this section. The transfer of allowances at such auction shall be recorded in accordance with the regulations promulgated by the Administrator under this subpart.

''(c) CHANGES IN AUCTIONS AND WITHHOLDING.—Pursuant to rulemaking after public notice and comment the Administrator may at any time after the year 1998 (in the case of advance auctions) and 2005 (in the case of spot auctions) decrease the number of allowances withheld and sold under this section.

''(d) TERMINATION OF AUCTIONS.—Not later than the commencement date of the sulfur dioxide allowance requirement under section 422, the Administrator shall terminate the withholding of allowances and the auction sales under this section. Pursuant to regulations under this section, the Administrator may be delegation or contract provide for the conduct of sales or auctions under the Administrator's supervision by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations.

''(e) The Administrator shall implement this section under 40 CFR part 73 (2002), amended as appropriate by the Administrator.

''SEC. 418. INDUSTRIAL SO_2 EMISSIONS.

''(a) REPORT.—Not later than January 1, 1995 and every 5 years thereafter, the Administrator shall transmit to the Congress a report containing an inventory of national annual sulfur dioxide emissions from industrial sources (as defined in section 411(11)), including units subject to section 414(g)(2), for all years for which data are available, as well as the likely trend in such emission over the following twenty-year period. The reports shall also contain estimates of the actual emission reduction in each year resulting from promulgation of the diesel fuel desulfurization regulations under section 214.

''(b) 5.60 MILLION TON CAP.—Whenever the inventory required by this section indicates that sulfur dioxide emissions from industrial sources, including units subject to section 414(g)(2), and may reasonably be expected to reach levels greater than 5.60 million tons per year, the Administrator shall take such actions under the Act as may be appropriate to ensure that such emissions do not exceed 5.60 million tons per year. Such actions may include the promulgation of new and revised standards of performance for new sources, including units subject to section 414(g)(2), under section 111(b), as well as promulgation of standards of performance for existing sources, including units subject to section 414(g)(2), under authority of this section. For an existing source regulated under this section, 'standard of performance' means a standard which the Administrator determines is applicable to that source and which reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

''(c) ELECTION.—Regulations promulgated under section 414(b) shall not prohibit a source from electing to become an affected unit under section 417.

''SEC. 419. TERMINATION.

''Starting January 1, 2010, the owners or operators of affected units and affected facilities under sections 412(b) and (c) and 416 and shall no longer be subject to the requirements of sections 412 through 417.

''Subpart 2—Clear Skies Sulfur Dioxide Allowance Program

''SEC. 421. DEFINITIONS.

''For purposes of this subpart—

''(1) The term 'affected EGU' means—

''(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2003, a unit in a State serving a generator with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2002 or any year thereafter, except for a cogeneration unit that produced or produces electricity for sale equal to or less than one-third of the potential electrical output of the generator that it served or serves during 2002 and each year thereafter; and

''(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2003, a unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a gas-fired unit serving one or more generators with total nameplate

capacity of 25 megawatts or less, or a cogeneration unit that produces electricity for sale equal to or less than one-third of the potential electrical output of the generator that it serves, during each year starting with the year the unit commences services of a generator.

Notwithstanding paragraphs (A) and (B), the term 'affected EGU' does not include a solid waste incineration unit subject to section 129 or a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act.

''(2) The term 'coal-fired' with regard to a unit means, for purposes of section 424, combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year during 1998 through 2002 or, for a unit that commenced operation during 2001–2004, a unit designed to combust coal or any coal-derived fuel alone or in combination with any other fuel.

''(3) The term 'Eastern bituminous' means bituminous that is from a mine located in a State east of the Mississippi River.

''(4) The term 'general account' means an account in the Allowance Tracking System under section 403(c) established by the Administrator for any person under 40 CFR §73.31(c) (2002), amended as appropriate by the Administrator.

''(5) The term 'oil-fired' with regard to a unit means, for purposes of section 424, combusting fuel oil for more than 10 percent of the unit's total heat input, and combusting no coal or coal-derived fuel, in any year during 1998 through 2002 or, for a unit that commenced operation during 2001–2004, a unit designed to combust oil for more than 10 percent of the unit's total heat input and not to combust any coal or coal-derived fuel coal.

''(6) The term 'unit account' means an account in the Allowance Tracking System under section 403(c) established by the Administrator for any unit under 40 CFR §73.31(a) and (b) (2002), amended as appropriate by the Administrator.

''SEC. 422. APPLICABILITY.

''(a) PROHIBITION.—Starting January 1, 2010, it shall be unlawful for the affected EGUs at a facility to emit a total amount of sulfur dioxide during the year in excess of the number of sulfur dioxide allowances held for such facility for that year by the owner or operator of the facility.

''(b) ALLOWANCES HELD.—Only sulfur dioxide allowances under section 423 shall be held in order to meet the requirements of subsection (a), except as provided under section 425.

''SEC. 423. LIMITATIONS ON TOTAL EMISSIONS.

''For affected EGUs for 2010 and each year thereafter, the Administrator shall allocate sulfur dioxide allowances under section 424, and shall conduct auctions of sulfur dioxide allowances under section 409, in the amounts in Table A.

''TABLE A.—TOTAL SO_2 ALLOWANCES ALLOCATED OR AUCTIONED FOR EGUS

Year	SO_2 allowances allocated	SO_2 allowances auctioned
2010	4,371,666	45,000
2011	4,326,667	90,000
2012	4,281,667	135,000
2013	4,320,000	180,000
2014	4,275,000	225,000
2015	4,230,000	270,000
2016	4,185,000	315,000
2017	4,140,000	360,000
2018	2,730,000	270,000
2019	2,700,000	300,000
2020	2,670,000	330,000
2021	2,640,000	360,000
2022	2,610,000	390,000
2023	2,580,000	420,000
2024	2,550,000	450,000
2025	2,520,000	480,000
2026	2,490,000	510,000

''TABLE A.—TOTAL SO_2 ALLOWANCES ALLOCATED OR AUCTIONED FOR EGUS—Continued

Year	SO_2 allowances allocated	SO_2 allowances auctioned
2027	2,460,000	540,000
2028	2,430,000	570,000
2029	2,400,000	600,000
2030	2,325,000	675,000
2031	2,250,000	750,000
2032	2,175,000	825,000
2033	2,100,000	900,000
2034	2,025,000	975,000
2035	1,950,000	1,050,000
2036	1,875,000	1,125,000
2037	1,800,000	1,200,000
2038	1,725,000	1,275,000
2039	1,650,000	1,350,000
2040	1,575,000	1,425,000
2041	1,500,000	1,500,000
2042	1,425,000	1,575,000
2043	1,350,000	1,650,000
2044	1,275,000	1,725,000
2045	1,200,000	1,800,000
2046	1,125,000	1,875,000
2047	1,050,000	1,950,000
2048	975,000	2,025,000
2049	900,000	2,100,000
2050	825,000	2,175,000
2051	750,000	2,250,000
2052	675,000	2,325,000
2053	600,000	2,400,000
2054	525,000	2,475,000
2055	450,000	2,550,000
2056	375,000	2,625,000
2057	300,000	2,700,000
2058	225,000	2,775,000
2059	150,000	2,850,000
2060	75,000	2,925,000
2061	0	3,000,000

''SEC. 424. EGU ALLOCATIONS.

''(a) IN GENERAL.—Not later than 24 months before the commencement date of the sulfur dioxide allowance requirement of section 422, the Administrator shall promulgate regulations determining allocations of sulfur dioxide allowances for affected EGUs for each year during 2010 through 2060. The regulations shall provide that:

''(1)(A) 95 percent of the total amount of sulfur dioxide allowances allocated each year under section 423 shall be allocated based on the sulfur dioxide allowances that were allocated under subpart 1 for 2010 or thereafter and are held in unit accounts and general accounts in the Allowance Tracking System under section 403(c).

''(B) The Administrator shall allocate sulfur dioxide allowances to each facility's account and each general account in the Allowance Tracking System under section 403(c) as follows:

''(i) For each unit account and each general account in the Allowance Tracking System, the Administrator shall determine the total amount of sulfur dioxide allowances allocated under subpart 1 for 2010 and thereafter that are recorded, as of 12:00 noon, Eastern Standard time, on the date 180 days after enactment of the Clear Skies Act of 2003. The Administrator shall determine this amount in accordance with 40 CFR part 73 (2002), amended as appropriate by the Administrator, except that the Administrator shall apply a discount rate of 7 percent for each year after 2010 to the amounts of sulfur dioxide allowances allocated for 2011 or later.

''(ii) For each unit account and each general account in the Allowance Tracking System, the Administrator shall determine an amount of sulfur dioxide allowances equal to the allocation amount under subparagraph (A) multiplied by the ratio of the amount of sulfur dioxide allowances determined to be recorded in that account under clause (i) to the total amount of sulfur dioxide allowances determined to be recorded in all unit accounts and general accounts in the Allowance Tracking System under clause (i).

''(iii) The Administrator shall allocate to each facility's account in the Allowance Tracking System an amount of sulfur dioxide allowances equal to the total amount of sulfur dioxide allowances determined under clause (ii) for the unit accounts of the units at the facility and shall allocate to each general account in the Allowance Tracking System the amount of sulfur dioxide allowances determined under clause (ii) for that general account.

''(2)(A) 3½ percent of the total amount of sulfur dioxide allowances allocated each year under section 423 shall be allocated for units at a facility that are affected EGUs as of December 31, 2004, that commenced operation before January 1, 2001, and that are not allocated any sulfur dioxide allowances under subpart 1.

''(B) The Administrator shall allocate each year for the units under subparagraph (A) an amount of sulfur dioxide allowances determined by:

''(i) For such units at the facility that are coal-fired, multiplying 0.40 lb/mmBtu by the total baseline heat input of such units and converting to tons.

''(ii) For such units at the facility that are oil-fired, multiplying 0.20 lb/mmBtu by the total baseline heat input of such units and converting to tons.

''(iii) For all such other units at the facility that are not covered by clause (i) or (ii), multiplying 0.05 lb/mmBtu by the total baseline heat input of such units and converting to tons.

''(iv) If the total of the amounts for all facilities under clauses (i), (ii), and (iii) exceeds the allocation amount under subparagraph (A), multiplying the allocation amount under subparagraph (A) by the ratio of the total of the amounts for the facility under clauses (i), (ii), and (iii) to the total of the amounts for all facilities under clause (i), (ii), and (iii).

''(v) Allocating to each facility the lesser of the total of the amounts for the facility under clauses (i), (ii), and (iii) or, if the total of the amounts for all facilities under clauses (i), (ii), and (iii) exceeds the allocation amount under subparagraph (A), the amount under clause (iv). The Administrator shall add to the amount of sulfur dioxide allowances allocated under paragraph (3) any unallocated allowances under this paragraph.

''(3)(A) 1½ percent of the total amount of sulfur dioxide allowances allocated each year under section 423 shall be allocated for units that are affected EGUs as of December 31, 2004, that commence operation on or after January 1, 2001 and before January 1, 2005, and that are not allocated any sulfur dioxide allowances under subpart 1.

''(B) The Administrator shall allocate each year for the units under subparagraph (A) an amount of sulfur dioxide allowances determined by:

''(i) For such units at the facility that are coal-fired or oil-fired, multiplying 0.19 lb/mmBtu by the total baseline heat input of such units and converting to tons.

''(ii) For all such other units at the facility that are not covered by clause (i), multiplying 0.02 lb/mmBtu by the total baseline heat input of such units and converting to tons.

''(iii) If the total of the amounts for all facilities under clauses (i) and (ii) exceeds the allocation amount under subparagraph (A), multiplying the allocation amount under subparagraph (A) by the ratio of the total of the amounts for the facility under clauses (i) and (ii) to the total of the amounts for all facilities under clauses (i) and (ii).

''(iv) Allocating to each facility the lesser of the total of the amounts for the facility under clauses (i) and (ii) or, if the total of the amounts for all facilities under clauses (i) and (ii) exceeds the allocation amount under subparagraph (A), the amount under clause (iv). The Administrator shall allocate to the facilities under paragraphs (1) and (2)

on a pro rata basis (based on the allocations under those paragraphs) any unallocated allowances under this paragraph.

''(b) FAILURE TO PROMULGATE.—(1) If, by the date 18 months before January 1 of each year 2010 through 2060, the Administrator has signed proposed regulations, but has not promulgated final regulations, determining allocations under subsection (a), the Administrator shall allocate, for such year, for each facility where an affected EGU is located, and for each general account, the amount of sulfur dioxide allowances specified for that facility and the general account in such proposed regulations.

''(2) If, by the date 18 months before January 1 of each year 2010 through 2060, the Administrator has not signed proposed regulations determining allocations under subsection (a), the Administrator shall:

''(A) determine, for such year, for each unit with coal as its primary or secondary fuel or residual oil as its primary fuel listed in the Administrator's Emissions Scorecard 2001, Appendix B, Table B1 an amount of sulfur dioxide allowances by multiplying 95 percent of the allocation amount under section 423 by the ratio of such unit's heat input in the Emissions Scorecard 2001, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2001, Appendix B, Table B1 for all units with coal as their primary or secondary fuel or residual oil as their primary fuel;

''(B) allocate, for such year, for each facility where a unit under subparagraph (A) is located the total of the amounts of sulfur dioxide allowances for the units at such facility determined under subparagraph (A); and

''(C) auction an amount of sulfur dioxide allowances equal to 5 percent of the allocation amount under section 423 and conduct the auction on the first business day in October following the respective promulgation deadline under paragraph (1) and in accordance with section 409.

''SEC. 425. DISPOSITION OF SULFUR DIOXIDE ALLOWANCES ALLOCATED UNDER SUBPART 1.

''(a) REMOVAL FROM ACCOUNTS.—After allocating allowances under section 424(a)(1), the Administrator shall remove from the unit accounts and general accounts in the Allowance Tracking System under section 403(c) and from the Special Allowances Reserve under section 418 all sulfur dioxide allowances allocated or deposited under subpart 1 for 2010 or later.

''(b) REGULATIONS.—The Administrator shall promulgate regulations as necessary to assure that the requirement to hold allowances under section 422 may be met using sulfur dioxide allowances allocated under subpart 1 for 1995 through 2009.

''SEC. 426. INCENTIVES FOR SULFUR DIOXIDE EMISSION CONTROL TECHNOLOGY.

''(a) RESERVE.—The Administrator shall establish a reserve of 250,000 sulfur dioxide allowances comprising 83,334 sulfur dioxide allowances for 2010, 83,333 sulfur dioxide allowances for 2011, and 83,333 sulfur dioxide allowances for 2012.

''(b) APPLICATION.—Not later than 18 months after the enactment of the Clear Skies Act of 2003, an owner or operator of an affected EGU that commenced operation before 2001 and that during 2001 combusted Eastern bituminous may submit an application to the Administrator for sulfur dioxide allowances from the reserve under subsection (a). The application shall include each of the following:

''(1) A statement that the owner or operator will install and commence operation of specified sulfur dioxide control technology at the unit within 24 months after approval of the application under subsection (c) if the unit is allocated the sulfur dioxide allowances requested under paragraph (4). The owner or operator shall provide description of the control technology.

''(2) A statement that, during the period starting with the commencement of operation of sulfur dioxide technology under paragraph (1) through 2009, the unit will combust Eastern bituminous at a percentage of the unit's total heat input equal to or exceeding the percentage of total heat input combusted by the unit in 2001 if the unit is allocated the sulfur dioxide allowances requested under paragraph (4).

''(3) A demonstration that the unit will achieve, while combusting fuel in accordance with paragraph (2) and operating the sulfur dioxide control technology specified in paragraph (1), a specified tonnage of sulfur dioxide emission reductions during the period starting with the commencement of operation of sulfur dioxide control technology under subparagraph (1) through 2009. The tonnage of emission reductions shall be the difference between emissions monitored at a location at the unit upstream of the control technology described in paragraph (1) and emissions monitored at a location at the unit downstream of such control technology, while the unit is combusting fuel in accordance with paragraph (2).

''(4) A request that EPA allocate for the unit a specified number of sulfur dioxide allowances from the reserve under subsection (a) for the period starting with the commencement of operation of the sulfur dioxide technology under paragraph (1) through 2009.

''(5) A statement of the ratio of the number of sulfur dioxide allowances requested under paragraph (4) to the tonnage of sulfur dioxide emissions reductions under paragraph (3).

''(c) APPROVAL OR DISAPPROVAL.—By order subject to notice and opportunity for comment, the Administrator shall—

''(1) determine whether each application meets the requirements of subsection (b);

''(2) list the applications meeting the requirements of subsection (b) and their respective allowance-to-emission-reduction ratios under paragraph (b)(5) in order, from lowest to highest, of such ratios;

''(3) for each application listed under paragraph (2), multiply the amount of sulfur dioxide emission reductions requested by each allowance-to-emission-reduction ratio on the list that equals or is less than the ratio for the application;

''(4) sum, for each allowance-to-emission-reduction ratio in the list under paragraph (2), the amounts of sulfur dioxide allowances determined under paragraph (3);

''(5) based on the calculations in paragraph (4), determine which allowance-to-emission-reduction ratio on the list under paragraph (2) results in the highest total amount of allowances that does not exceed 250,000 allowances; and

''(6) approve each application listed under paragraph (2) with a ratio equal to or less than the allowance-to-emission-reduction ratio determined under paragraph (5) and disapprove all the other applications.

''(d) MONITORING.—An owner or operator whose application is approved under subsection (c) shall install, and quality assure data from, a CEMS for sulfur dioxide located upstream of the sulfur dioxide control technology under paragraph (b)(1) at the unit and a CEMS for sulfur dioxide located downstream of such control technology at the unit during the period starting with the commencement of operation of such control technology through 2009. The installation of the CEMS and the quality assurance of data shall be in accordance with subparagraph (a)(2)(B) and subsections (c) through (e) of section 405, except that, where two or more units utilize a single stock, separate monitoring shall be required for each unit.

''(e) ALLOCATIONS.—Not later than 6 months after the commencement date of the sulfur dioxide allowance requirement of section 422, for the units for which applications are approved under subsection (c), the Administrator shall allocate sulfur dioxide allowances as follows:

''(1) For each unit, the Administrator shall multiply the allowance-to-emission-reduction ratio of the last application that EPA approved under subsection (c) by the lesser of—

''(A) the total tonnage of sulfur dioxide emissions reductions achieved by the unit, during the period starting with the commencement of operation of the sulfur dioxide control technology under subparagraph (b)(1) through 2009, through use of such control technology; or

''(B) the tonnage of sulfur dioxide emission reductions under paragraph (b)(3).

''(2) If the total amount of sulfur dioxide allowances determined for all units under paragraph (1) exceeds 250,000 sulfur dioxide allowances, the Administrator shall multiply 250,000 sulfur dioxide allowances by the ratio of the amount of sulfur dioxide allowances determined for each unit under paragraph (1) to the total amount of sulfur dioxide allowances determined for all units under paragraph (1).

''(3) The Administrator shall allocate to each unit the lesser of the amount determined for that unit under paragraph (1) or, if the total amount of sulfur dioxide allowances determined for all units under paragraph (1) exceeds 250,000 sulfur dioxide allowances, under paragraph (2). The Administrator shall auction any unallocated allowances from the reserve under this section and conduct the auction by the first business day in October 2010 and in accordance with section 409.

''Subpart 3—Western Regional Air Partnership

''SEC. 431. DEFINITIONS.

''For purposes of this subpart—

''(1) The term 'adjusted baseline heat input' means the average annual heat input used by a unit during the 3 years in which the unit had the highest heat input for the period from the 8th through the 4th year before the first covered year.

''(A) Notwithstanding paragraph (1), if a unit commences operation during such period and—

''(i) on or after January 1 of the fifth year before the first covered year, then 'adjusted baseline heat input' shall mean the average annual heat input used by the unit during the fifth and 4th years before the first covered year; and

''(ii) on or after January 1 of the 4th year before the first covered year, then 'adjusted baseline heat input' shall mean the annual heat input used by the unit during the 4th year before the first covered year.

''(B) A unit's heat input for a year shall be the heat input—

''(i) required to be reported under section 405 for the unit, if the unit was required to report heat input during the year under that section;

''(ii) reported to the Energy Information Administrator for the unit, if the unit was not required to report heat input under section 405;

''(iii) based on data for the unit reported to the WRAP State where the unit is located as required by State law, if the unit was not required to report heat input during the year under section 405 and did not report to the Energy Information Administration; or

''(iv) based on fuel use and fuel heat content data for the unit from fuel purchase or use records, if the unit was not required to

report heat input during the year under section 405 and did not report to the Energy Information Administration and the WRAP State.

''(2) The term 'affected EGU' means an affected EGU under subpart 2 that is in a WRAP State and that—

''(A) in 2000, emitted 100 tons or more of sulfur dioxide and was used to produce electricity for sale; or

''(B) in any year after 2000, emits 100 tons or more of sulfur dioxide and is used to produce electricity for sale.

''(3) The term 'coal-fired' with regard to a unit means, for purposes of section 434, a unit combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year during the period from the 8th through the 4th year before the first covered year.

''(4) The term 'covered year' means—

''(A)(i) the third year after the year 2018 or later when the total annual sulfur dioxide emissions of all affected EGUs in the WRAP States first exceed 271,000 tons; or

''(ii) the third year after the year 2013 or later when the Administrator determines by regulation that the total annual sulfur dioxide emissions of all affected EGUs in the WRAP States are reasonably projected to exceed 271,000 tons in 2018 or any year thereafter. The Administrator may make such determination only if all the WRAP States submit to the Administrator a petition requesting that the Administrator issue such determination and make all affected EGUs in the WRAP States subject to the requirements of sections 432 through 434; and

''(B) each year after the 'covered year' under subparagraph (A).

''(5) The term 'oil-fired' with regard to a unit means, for purposes of section 434, a unit combusting fuel oil for more than 10 percent of the unit's total heat input, and combusting no coal or coal-derived fuel, an any year during the period from the eight through the 4th year before the first covered year.

''(6) The term 'WRAP State' means Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming.

''SEC. 432. APPLICABILITY.

''(a) PROHIBITION.—Starting January 1 of the first covered year, it shall be unlawful for the affected EGUs at a facility to emit a total amount of sulfur dioxide during the year in excess of the number of sulfur dioxide allowances held for such facility for that year by the owner or operator of the facility.

''(b) ALLOWANCES HELD.—Only sulfur dioxide allowances under section 433 shall be held in order to meet the requirements of subsection (a).

''SEC. 433. LIMITATIONS ON TOTAL EMISSIONS.

''For affected EGUs, the total amount of sulfur dioxide allowances that the Administrator shall allocate for each covered year under section 434 shall equal 271,000 tons.

''SEC. 434. EGU ALLOCATIONS.

''(a) IN GENERAL.—By January 1 of the year before the first covered year, the Administrator shall promulgate regulations determining, for each covered year, the allocations of sulfur dioxide allowances for the units at a facility that are affected EGUs as of December 31 of the 4th year before the covered year by—

''(1) for such units at the facility that are coal-fired, multiplying 0.40 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons;

''(2) for such units at the facility that are oil-fired, multiplying 0.20 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons;

''(3) for all such other units at the facility that are not covered by paragraph (1) or (2) multiplying 0.05 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons; and

''(4) multiplying the allocation amount under section 433 by the ratio of the total of the amounts for the facility under paragraphs (1), (2), and (3) to the total of the amounts for all facilities under paragraphs (1), (2), and (3).

''(b) FAILURE TO PROMULGATE.—(1) For each covered year, if, by the date 18 months before January 1 of such year, the Administrator has signed proposed regulations but has not promulgated final regulations determining allocations under paragraph (a), then the Administrator shall allocate, for such year, for each facility where an affected EGU is located the amount of sulfur dioxide allowances specified for that facility in such proposed regulations.

''(2) For each covered year, if, by the date 18 months before January 1 of such year, the Administrator has not signed proposed regulations determining allocations under subsection (a), the Administrator shall:

''(A) determine, for such year, for each affected EGU with coal as its primary or secondary fuel or residual oil as its primary fuel listed in the Administrator's Emissions Scorecard 2001, Appendix B, Table B1 an amount of sulfur dioxide allowances by multiplying 95 percent of the allocation amount under section 433 by the ratio of such unit's heat input in the Emissions Scorecard 2001, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2001, Appendix B, Table B1 for all affected EGUs with coal as their primary or secondary fuel or residual oil as their primary fuel;

''(B) allocate, for such year, for each facility where a unit under subparagraph (A) is located the total the amounts of sulfur dioxide allowances for the units at such facility determined under subparagraph (A); and

''(C) auction an amount of sulfur dioxide allowances equal to 5 percent of the allocation amount under section 433 and conduct the auction on the first business day in October following the respective promulgation deadline under paragraph (1) and in accordance with section 409.

''PART C—NITROGEN OXIDES CLEAR SKIES EMISSION REDUCTIONS

''Subpart 1—Acid Rain Program

''SEC. 441. NITROGEN OXIDES EMISSION REDUCTION PROGRAM.

''(a) APPLICABILITY.—On the date that a coal-fired utility unit becomes an affected unit pursuant to sections 413 or 414, or on the date a unit subject to the provisions of section 413(d), must meet the SO_2 reduction requirements, each such unit shall become an affected unit for purposes of this section and shall be subject to the emission limitations for nitrogen oxides set forth herein.

''(b) EMISSION LIMITATIONS.—(1) The Administrator shall by regulation establish annual allowable emission limitations for nitrogen oxides for the types of utility boilers listed below, which limitations shall not exceed the rates listed below: Provided, That the Administrator may set a rate higher than that listed for any type of utility boiler if the Administrator finds that the maximum listed rate for that boiler type cannot be achieved using low NO_X burner technology. The Administrator shall implement this paragraph under 40 CFR §76.5 (2002). The maximum allowable emission rates are as follows:

''(A) for tangentially fired boilers, 0.45 lb/mmBtu; and

''(B) for dry bottom wall-fired boilers (other than units applying cell burner technology), 0.50 lb/mmBtu. After January 1, 1995, it shall be unlawful for any unit that is an affected unit on that date and is of the type listed in this paragraph to emit nitrogen oxides in excess of the emission rates set by the Administrator pursuant to this paragraph.

''(2) The Administrator shall, by regulation, establish allowable emission limitations on a lb/mmBtu, annual average basis, for nitrogen oxides for the following types of utility boilers:

''(A) wet bottom wall-fired boilers;

''(B) cyclones;

''(C) units applying cell burner technology; and

''(D) all other types of utility boilers.

The Administrator shall base such rates on the degree of reduction achievable through the retrofit application of the best system of continuous emission reduction, taking into account available technology, costs and energy and environmental impacts; and which is comparable to the costs of nitrogen oxides controls set pursuant to subsection (b)(1). The Administrator may revise the applicable emission limitations for tangentially fired and dry bottom, wall-fired boilers (other than cell burners) to be more stringent if the Administrator determines that more effective low NO_x burned technology is available: Provided, That, no unit that is an affected unit pursuant to section 413 and that is subject to the requirements of subsection (b)(1), shall be subject to the revised emission limitations, if any. The Administrator shall implement that paragraph under 40 CFR §§76.6 and 76.7 (2002).

''(c) ALTERNATIVE EMISSION LIMITATIONS.—(1) The permitting authority shall, upon request of an owner or operator of a unit subject to this section, authorize an emission limitation less stringent than the applicable limitation established under subsection (b)(1) or (b)(2) upon a determination that—

''(A) a unit subject to subsection (b)(1) cannot meet the applicable limitation using low NO_X burner technology; or

''(B) a unit subject to subsection (b)(2) cannot meet the applicable rate using the technology on which the Administrator based the applicable emission limitation.

''(2) The permitting authority shall base such determination upon a showing satisfactory to the permitting authority, in accordance with regulations established by the Administrator, that the owner or operator—

''(A) has properly installed appropriate control equipment designed to meet the applicable emission rate;

''(B) has properly operated such equipment for a period of 15 months (or such other period of time as the Administrator determines through the regulations), and provides operating and monitoring data for such period demonstrating that the unit cannot meet the applicable emission rate; and

''(C) has specified an emission rate that such unit can meet on an annual average basis. The permitting authority shall issue an operating permit for the unit in question, in accordance with section 404 and title V—

''(i) that permits the unit during the demonstration period referred to in subparagraph (B), to emit at a rate in excess of the applicable emission rate;

''(ii) at the conclusion of the demonstration period to revise the operating permit to reflect the alternative emission rate demonstrated in subparagraphs (B) and (C).

''(3) Units subject to subsection (b)(1) for which an alternative emission limitation is established shall not be required to install any additional control technology beyond low NO_X burners. Nothing in this section shall preclude an owner or operator from installing and operating an alternative NO_X control technology capable of achieving the applicable emission limitation. The Administrator shall implement this subsection under 40 CFR part 76 (2002), amended as appropriate by the Administrator.

''(d) EMISSIONS AVERAGING.—(1) In lieu of complying with the applicable emission limitations under subsection (b)(1), (2), or (c), the owner or operator of two or more units subject to one or more of the applicable emission limitations set pursuant to these sections, may petition the permitting authority for alternative contemporaneous annual emission limitations for such units that ensure that—

''(A) the actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than or equal to

''(B) the Btu-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limitations set in accordance with the applicable emission rates set pursuant to subsections (b)(1) and (2).

''(2) If the permitting authority determines, in accordance with regulations issued by the Administrator that the conditions in paragraph (1) can be met, the permitting authority shall issue operating permits for such units, in accordance with section 404 and title V, that allow alternative contemporaneous annual emission limitations. Such emission limitations shall only remain in effect while both units continue operation under the conditions specified in their respective operating permits. The Administrator shall implement this subsection under 40 CFR part 76 (2002), amended as appropriate by the Administrator.

''SEC. 442. TERMINATION.

''Starting January 1, 2008, owner or operator of affected units and affected facilities under section 441 shall no longer be subject to the requirements of that section.

''Subpart 2—Clear Skies Nitrogen Oxides Allowance Program

''SEC. 451. DEFINITIONS.

''For purposes of this subpart:

''(1) The term 'affected EGU' means—

''(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2003, a unit in a State serving a generator with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2002 or any year thereafter, except for a cogeneration unit that produced or produces electricity for sale equal to or less than one-third of the potential electrical output of the generator that it served or serves during 2002 and each year thereafter; and

''(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2003, a unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a gas-fired unit serving one or more generators with total nameplate capacity of 25 megawatts or less, or a cogeneration unit that produces electricity for sale equal to or less than one-third of the potential electrical output of the generator that it serves, during each year starting with the unit commences service of a generator.

''(C) Notwithstanding paragraphs (A) and (B), the term 'affected EGU' does not include a solid waste incineration unit subject to section 129 or a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act.

''(2) The term 'Zone 1 State' means Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas east of Interstate 35, Vermont, Virginia, West Virginia, and Wisconsin.

''(3) The term 'Zone 2 State' means Alaska, American Samoa, Arizona, California, Colorado, the Commonwealth of Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, Hawaii, Idaho, Kansas, Montana, Nebraska, North Dakota, New Mexico, Nevada, Oklahoma, Oregon, South Dakota, Texas west of Interstate 35, Utah, the Virgin Islands, Washington, and Wyoming.

''SEC. 452. APPLICABILITY.

''(a) ZONE 1 PROHIBITION.—(1) Starting January 1, 2008, it shall be unlawful for the affected EGUs at a facility in a Zone 1 State to emit a total amount of nitrogen oxides during a year in excess of the number of nitrogen oxides allowances held for such facility for that year by the owner or operator of the facility.

''(2) Only nitrogen oxides allowances under section 453(a) shall be held in order to meet the requirements of paragraph (1), except as provided under section 465.

''(b) ZONE 2 PROHIBITION.—(1) Starting January 1, 2008, it shall be unlawful for the affected EGUs at a facility in a Zone 2 State to emit a total amount of nitrogen oxides during a year in excess of the number of nitrogen oxides allowances held for such facility for that year by the owner or operator of the facility.

''(2) Only nitrogen oxides allowances under section 453(b) shall be held in order to meet the requirements of paragraph (1).

''SEC. 453. LIMITATIONS ON TOTAL EMISSIONS.

''(a) ZONE 1 ALLOCATIONS.—For affected EGUs in the Zone 1 States for 2008 and each year thereafter, the Administrator shall allocate nitrogen oxides allowances under section 454(a), and conduct auctions of nitrogen oxides allowances under section 409, in the amounts in Table A.

''TABLE A.—TOTAL NO_X ALLOWANCES ALLOCATED OR AUCTIONED FOR EGUS IN ZONE 1

Year	NO_X allowances allocated	NO_X allowances auctioned
2008	1,546,380	15,620
2009	1,530,760	31,240
2010	1,515,140	46,860
2011	1,499,520	62,480
2012	1,483,900	78,100
2013	1,468,280	93,720
2014	1,452,660	109,340
2015	1,437,040	124,960
2016	1,421,420	140,580
2017	1,405,800	156,200
2018	1,034,180	127,820
2019	1,022,560	139,440
2020	1,010,940	151,060
2021	999,320	162,680
2022	987,700	174,300
2023	976,080	185,920
2024	964,460	197,540
2025	952,840	209,160
2026	941,220	220,780
2027	929,600	232,400
2028	900,550	261,450
2029	871,500	290,500
2030	842,450	319,550
2031	813,400	348,600
2032	784,350	377,650
2033	755,300	406,700
2034	726,250	435,750
2035	697,200	464,800
2036	668,150	493,850
2037	639,100	522,900
2038	610,050	551,950
2039	581,000	581,000
2040	551,950	610,050
2041	522,900	639,100
2042	493,850	668,150
2043	464,800	697,200
2044	435,750	726,250
2045	406,700	755,300
2046	377,650	784,350
2047	348,600	813,400
2048	319,550	842,450
2049	290,500	871,500
2050	261,450	900,550
2051	232,400	929,550
2052	203,350	958,650
2053	174,300	987,700
2054	145,250	1,016,750
2055	116,200	1,045,800
2056	87,150	1,074,850
2057	58,100	1,103,900
2058	29,050	1,132,950
2059	0	1,162,000

''(b) ZONE 2 ALLOCATIONS.—For affected EGUs in the Zone 2 States for 2008 and each year thereafter, the Administrator shall allocate nitrogen oxides allowances under section 454(b), and conduct auctions of nitrogen oxides allowances under section 409, in the amounts in Table B.

''TABLE B.—TOTAL NO_X ALLOWANCES ALLOCATED FOR EGUS IN ZONE 2

Year	NO_X allowance allocated	NO_X allowance auctioned
2008	532,620	5,380
2009	527,240	10,760
2010	521,860	16,140
2011	516,480	21,520
2012	511,100	26,900
2013	505,720	32,280
2014	500,340	37,660
2015	494,960	43,040
2016	489,580	48,420
2017	484,200	53,800
2018	478,820	59,180
2019	473,440	64,560
2020	468,060	69,940
2021	462,680	75,320
2022	457,300	80,700
2023	451,920	86,080
2024	446,540	91,460
2025	441,160	96,840
2026	435,780	102,220
2027	430,400	107,600
2028	416,950	121,050
2029	403,500	134,500
2030	390,050	147,950
2031	376,600	161,400
2032	363,150	174,850
2033	349,700	188,300
2034	336,250	201,750
2035	322,800	215,200
2036	309,350	228,650
2037	295,900	242,100
2038	282,450	255,550
2039	269,000	269,000
2040	255,550	282,450
2041	242,100	295,900
2042	228,650	309,350
2043	215,200	322,800
2044	201,750	336,250
2045	188,300	349,700
2046	174,850	363,150
2047	161,400	376,600
2048	147,950	390,050
2049	134,500	403,500
2050	121,050	416,950
2051	107,600	430,400
2052	94,150	443,850
2053	80,700	457,300
2054	67,250	470,750
2055	53,800	484,200
2056	40,350	497,650
2057	26,900	511,100
2058	13,450	524,550
2059	0	538,000

''SEC. 454. EGU ALLOCATIONS.

''(a) EGU ALLOCATIONS IN THE ZONE 1 STATES.—

''(1) EPA REGULATIONS.—Not later than 18 months before the commencement date of the nitrogen oxides allowance requirement of section 452, the Administrator shall promulgate regulations determining the allocation of nitrogen oxides allowances for each year during 2008 through 2058 for units at a facility in a Zone 1 State that commence operation by and are affected EGUs as of December 31, 2004. The regulations shall determine the allocation for such units for each year by multiplying the allocation amount under section 453(a) by the ratio of the total amount of baseline heat input of such units at the facility to the total amount of baseline heat input of all affected EGUs in the Zone 1 States.

''(2) FAILURE TO REGULATE.—(A) For each year 2008 through 2058, if, by the date 18 months before January 1 of such year, the Administrator—

''(i) has promulgated regulations under section 403(b) providing for the transfer of nitrogen oxides allowances and section 403(c) establishing the Allowance Tracking System for nitrogen oxides allowances; and

''(ii) has signed proposed regulations but has not promulgated final regulations determining allocations under paragraph (1),

the Administrator shall allocate, for such year, for each facility where an affected EGU is located in the Zone 1 States the amount of nitrogen oxides allowances specified for that facility in such proposed regulations.

''(B) For each year 2008 through 2058, if, by the date 18 months before January 1 of such year, the Administrator—

''(i) has promulgated regulations under section 403(b) providing for the transfer of nitrogen oxides allowances and section 403(c) establishing the Allowance Tracking System for nitrogen oxides allowances; and

''(ii) has not signed proposed regulations determining allocations under paragraph (1),

the Administrator shall make allocations, for such year, for each unit in the Zone 1 States listed in the Administrator's Emissions Scorecard 2001, Appendix B, Table B1 as provided in subparagraph (C).

''(C) Allocations of nitrogen oxides allowances for a unit under this subparagraph shall be determined by multiplying 95 percent of the allocation amount under section 453(a) by the ratio of such unit's heat input in the Emissions Scorecard 2001, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2001, Appendix B, Table B1 for all units in the Zone 1 States.

''(D) When the Administrator makes an allocation under subparagraph (C), the Administrator shall—

''(i) allocate for each facility where a unit referred to in subparagraph (C) is located the total of the amounts of nitrogen oxides allowances for the units at such facility, and

''(ii) auction an amount of nitrogen oxides allowances equal to 5 percent of the allocation amount under section 453(a) and conduct the auction on the first business day in October following the respective promulgation deadline referred to in subparagraph (A) and in accordance with section 409.

''(E) For each year 2008 through 2058, if the Administrator has not signed proposed regulations referred to in subparagraph (A) and has not promulgated the regulations under section 403(b) providing for the transfer of nitrogen oxides allowances and section 403(c) establishing the Allowance Tracking System for nitrogen oxides allowances, by the date 18 months before January 1 of such year, then it shall be unlawful for an affected EGU in the Zone 1 States to emit nitrogen oxides during such year in excess of 0.14 lb/mmBtu.

''(b) EGU ALLOCATIONS IN THE ZONE 2 STATES.—

''(1) EPA REGULATIONS.—Not later than 18 months before the commencement date of the nitrogen oxides allowance requirement of section 452, the Administrator shall promulgate regulations determining the allocation of nitrogen oxides allowances for each year during 2008 through 2058 for units at a facility in a Zone 2 State that commence operation by and are affected EGUs as of December 31, 2004. The regulations shall determine the allocation for such units for each year by multiplying the allocation amount under section 453(b) by the ratio of the total amount of baseline heat input of such units at the facility to the total amount of baseline heat input of all affected EGUs in the Zone 2 States.

''(2) FAILURE TO REGULATE.—(A) For each year 2008 through 2058, if, by the date 18 months before January 1 of such year, the Administrator—

''(i) has promulgated regulations under section 403(b) providing for the transfer of nitrogen oxides allowances and section 403(c) establishing the Allowance Tracking System for nitrogen oxides allowances; and

''(ii) has signed proposed regulations but has not promulgated final regulations determining allocations under paragraph (1),

the Administrator shall allocate, for such year, for each facility where an affected EGU is located in the Zone 2 States the amount of nitrogen oxides allowances specified for that facility in such proposed regulations.

''(B) For each year 2008 through 2058, if, by the date 18 months before January 1 of such year, the Administrator—

''(i) has promulgated regulations under section 403(b) providing for the transfer of nitrogen oxides allowances and section 403(c) establishing the Allowance Tracking System for nitrogen oxides allowances; and

''(ii) has not signed proposed regulations determining allocations under paragraph (1),

the Administrator shall make allocations, for such year, for each unit in the Zone 2 States listed in the Administrator's Emissions Scorecard 2001, Appendix B, Table B1 as provided in subparagraph (C).

''(C) Allocations of nitrogen oxides allowances for a unit under this subparagraph shall be determined by multiplying 95 percent of the allocation amount under section 453(b) by the ratio of such unit's heat input in the Emissions Scorecard 2001, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2001, Appendix B, Table B1 for all units in the Zone 2 States.

''(D) When the Administrator make an allocation under subparagraph (C), the Administrator shall—

''(i) allocate for each facility where a unit referred to in subparagraph (C) is located the total of the amounts of nitrogen oxides allowances for the units at such facility, and

''(ii) auction an amount of nitrogen oxides allowances equal to 5 percent of the allocation amount under section 453(b) and conduct the auction on the first business day in October following the respective promulgation deadline referred to in subparagraph (A) and in accordance with section 409.

''(E) For each year 2008 through 2058, if the Administrator has not signed proposed regulations referred to in subparagraph (A) and has not promulgated the regulations under section 403(b) providing for the transfer of nitrogen oxides allowances and section 403(c) establishing the Allowance Tracking System for nitrogen oxides allowances, by the date 18 months before January 1 of such year, then it shall be unlawful for an affected EGU in the Zone 2 States to emit nitrogen oxides during such year in excess of 0.25 lb/mmBtu.

''Subpart 3—Ozone Season NO_X Budget Program

''SEC. 461. DEFINITIONS.

''For purposes of this subpart:

''(1) The term 'ozone season' means—

''(A) with regard to Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island, the period May 1 through September 30 for each year starting in 2003; and

''(B) with regard to all other States, the period May 30, 2004 through September 30, 2004 and the period May 1 through September 30 for each year thereafter.

''(2) The term 'NO_X SIP Call State' means Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kennedy, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia and the fine grid portions of Alabama, Georgia, Michigan, and Missouri.

''(3) The term 'fine grid portions of Alabama, Georgia, Michigan, and Missouri' means the areas in Alabama, Georgia, Michigan, and Missouri subject to 40 CFR §51.121 (2001), as it would be amended in the notice of proposed rulemaking at 67 Federal Register 8396 (February 22, 2002).

''SEC. 462. GENERAL PROVISIONS.

''The provisions of sections 402 through 406 and section 409 shall not apply to this subpart.

''SEC. 463. APPLICABLE IMPLEMENTATION PLAN.

''(a) SIPS.—Except as provided in subsection (b), the applicable implementation plan for each NO_X SIP Call State shall be consistent with the requirements, including the NO_X SIP Call State's nitrogen oxides budget and compliance supplement pool, in 40 CFR §§51.121 and 51.122 (2001), as it would be amended in the notice of proposed rulemaking at 67 Federal Register 8396 (February 22, 2002).

''(b) REQUIREMENTS.—Notwithstanding any provision to the contrary in 40 CFR §§51.121 and 51.122 (2001), as it would be amended in the notice of proposed rulemaking at 67 Federal Register 8396 (February 22, 2002)—

''(1) the applicable implementation plan for each NO_X SIP Call State shall require full implementation of the required emission control measures starting no later than the first ozone season; and

''(2) starting January 1, 2008—

''(A) the owners and operators of a boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D shall not longer be subject to the requirements in a NO_X SIP Call State's applicable implementation plan that meet the requirements of subsection (a) and paragraph (1); and

''(B) notwithstanding subparagraph (A), if the Administrator determines, by December 31, 2007, that a NO_X SIP Call State's applicable implementation plan meets the requirements of subsection (a) and paragraph (1), such applicable implementation plan shall be deemed to continue to meet such requirements; and

''(3)(A) The owner or operator of a boiler, combustion turbine, or combined cycle system may submit to the Administrator a petition to allow use of nitrogen oxides allowances allocated for 2005 to meet the applicable requirement to hold nitrogen oxides allowances at least equal to 2004 ozone season emissions of such boiler, combustion turbine, or combined cycle system.

''(B) A petition under this paragraph shall be submitted to the Administrator by February 1, 2004.

''(C) The petition shall demonstrate that the owner or operator made reasonable efforts to install, at the boiler, combustion turbine, or combined cycle system, nitrogen oxides control technology designed to allow the owner or operator to meet such requirement to hold nitrogen oxides allowances.

''(D) The petition shall demonstrate that there is an undue risk for the reliability of electricity supply (taking into account the feasibility of purchasing electricity or nitrogen oxides allowances) because—

''(i) the owner or operator is not likely to be able to install and operate the technology under subparagraph (C) on a timely basis; or

''(ii) the technology under subparagraph (C) is not likely to be able to achieve its design control level on a timely basis.

''(E) The petition shall include a statement by the NO_x SIP Call State where the boiler, combustion turbine, or combined cycle system is located that the NO_x SIP Call State does not object to the petition.

''(F) By May 30, 2004, by order, the Administrator shall approve the petition if it meets the requirements of subparagraphs (B) through (E).

''(c) SAVINGS PROVISION.—Nothing in this section or section 464 shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation, or standard, relating to a boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D, that is more stringent than a regulation, requirement, limitation, or standard in effect under this section or under any other provision of this Act.

''SEC. 464. TERMINATION OF FEDERAL ADMINISTRATION OF NO_X TRADING PROGRAM FOR EGUS.

''Starting January 1, 2008, with regard to any boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D, the Administrator shall not administer any nitrogen oxides trading program included in any NO_X SIP Call State's applicable implementation plan and meeting the requirements of section 463(a) and (b)(1).

''SEC. 465. CARRYFORWARD OF PRE-2008 NITROGEN OXIDES ALLOWANCES.

''The Administrator shall promulgate regulations as necessary to assure that the requirement to hold allowances under section 452(a)(1) may be met using nitrogen oxides allowances allocated for an ozone season before 2008 under a nitrogen oxides trading program that the Administrator administers, is included in a NO_X SIP Call State's applicable implementation plan, and meets the requirements of section 463(a) and (b)(1).

''PART D—MERCURY EMISSIONS REDUCTIONS

''SEC. 471. DEFINITIONS.

''For purposes of this subpart:

''(1) The term 'adjusted baseline heat input' with regard to a unit means the unit's baseline heat input multiplied by—

''(A) 1.0, for the portion of the baseline heat input that is the unit's average annual combustion of bituminous during the years on which the unit's baseline heat input is based;

''(B) 3.0, for the portion of the baseline heat input that is the unit's average annual combustion of lignite during the years on which the unit's baseline heat input is based;

''(C) 1.25, for the portion of the baseline heat input that is the unit's average annual combustion of subbituminous during the years on which the unit's baseline heat input is based; and

''(D) 1.0, for the portion of the baseline heat input that is not covered by subparagraph (A), (B), or (C) or for the entire baseline heat input if such baseline heat input is not based on the unit's heat input in specified years.

''(2) The term 'affected EGU' means—

''(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2003, a coal-fired unit in a State serving a generator with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2002 or any year thereafter, except for a cogeneration unit that produced or produces electricity for sale equal to or less than one-third of the potential electrical output of the generator that it served or serves during 2002 and each year thereafter; and

''(B) for a unit commencing service of a generator on or after the date of enactment of the Clear Skies Act of 2003, a coal-fired unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a cogeneration unit that produces electricity for sale equal to or less than one-third of the potential electrical output of the generator that it serves, during each year starting with the year the unit commences service of a generator.

''(C) Notwithstanding paragraphs (A) and (B), the term 'affected EGU' does not include a solid waste incineration unit subject to section 129 or a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act.

''SEC. 472. APPLICABILITY.

''Starting January 1, 2010, it shall be unlawful for the affected EGUs at a facility in a State to emit a total amount of mercury during the year in excess of the number of mercury allowances held for such facility for that year by the owner or operator of the facility.

''SEC. 473. LIMITATIONS ON TOTAL EMISSIONS.

''For affected EGUs for 2010 and each year thereafter, the Administrator shall allocate mercury allowances under section 474, and conduct auctions of mercury allowances under section 409, in the amounts in Table A.

''TABLE A.—TOTAL MERCURY ALLOWANCES ALLOCATED OR AUCTIONED FOR EGUS

Year	Mercury allowances allocated	Mercury allowances auctioned
2010	823,680	8,320
2011	815,360	16,640
2012	807,040	24,960
2013	798,720	33,280
2014	790,400	41,600
2015	782,080	49,920
2016	773,760	58,240
2017	765,440	66,560
2018	436,800	43,200
2019	432,000	48,000
2020	427,200	52,800
2021	422,400	57,600
2022	417,600	62,400
2023	412,800	67,200
2024	408,000	72,000
2025	403,200	76,800
2026	398,400	81,600
2027	393,600	86,400
2028	388,800	91,200
2029	384,000	96,000
2030	372,000	108,000
2031	360,000	120,000
2032	348,000	132,000
2033	336,000	144,000
2034	324,000	156,000
2035	312,000	168,000
2036	300,000	180,000
2037	288,000	192,000
2038	276,000	204,000
2039	264,000	216,000
2040	252,000	228,000
2041	240,000	240,000
2042	228,000	252,000
2043	216,000	264,000
2044	204,000	276,000
2045	192,000	288,000
2046	180,000	300,000
2047	168,000	312,000
2048	156,000	324,000
2049	144,000	336,000
2050	132,000	348,000
2051	120,000	360,000
2052	108,000	372,000
2053	96,000	384,000
2054	84,000	396,000
2055	72,000	408,000
2056	60,000	420,000
2057	48,000	432,000
2058	36,000	444,000
2059	24,000	456,000
2060	12,000	468,000
2061	0	480,000

''SEC. 474. EGU ALLOCATIONS.

''(a) IN GENERAL.—Not later than 24 months before the commencement date of the mercury allowance requirement of section 472, the Administrator shall promulgate regulations determining allocations of mercury allowances for each year during 2010 through 2060 for units at a facility that commence operation by and are affected EGUs as of December 31, 2004. The regulations shall provide that the Administrator shall allocate each year for such units an amount determined by multiplying the allocation amount in section 473 by the ratio of the total amount of the adjusted baseline heat input of such units at the facility to the total amount of adjusted baseline heat input of all affected EGUs.

''(b) FAILURE TO PROMULGATE.—(1) For each year 2010 through 2060, if, by the date 18 months before January 1 of such year, the Administrator—

''(A) has promulgated regulations under section 403(b) providing for the transfer of mercury allowances and section 403(c) establishing the Allowance Tracking System for mercury allowances; and

''(B) has signed proposed regulations but has not promulgated final regulations determining allocations under subsection (a),

the Administrator shall allocate, for such year, for each facility where an affected EGU is located the amount of mercury allowances specified for that facility in such proposed regulations.

''(2) If, by the date 18 months before January 1 of each year 2010 through 2060, the Administrator has not signed proposed regulations determining allocations under subsection (a), the Administrator shall:

''(A) determine, for such year, for each unit with coal as its primary or secondary fuel listed in the Administrator's Emissions Scorecard 2001, Appendix B, Table B1 an amount of mercury allowances by multiplying 95 percent of the allocation amount under section 473 by the ratio of such unit's heat input in the Emissions Scorecard 2001, Appendix B, Table B1 to the total of the heat input in the Emissions Scorecard 2001, Appendix B, Table B1 for all units with coal as their primary or secondary fuel;

''(B) allocate, for such year, for each facility where a unit under subparagraph (A) is located the total of the amounts of mercury allowances for the units at such facility determined under subparagraph (A); and

''(C) auction an amount of mercury allowances equal to 5 percent of the allocation amount under section 473 and conduct the auction on the first business day in October following the respective promulgation deadline under paragraph (1) and in accordance with section 409.

''(3) For each year 2010 through 2060, if the Administrator has not signed proposed regulations under subsection (a), and has not promulgated the regulations under section 403(b) providing for the transfer of mercury allowances and section 403(c) establishing the Allowance Tracking System for mercury allowances, by the date 18 months before January 1 of such year, then it shall be unlawful for any affected EGU to emit mercury during such year in excess of 30 percent of the mercury content (in ounces per mmBtu) of the coal and coal-derived fuel combusted by the unit.

''PART E—NATIONAL EMISSION STANDARDS; RESEARCH; ENVIRONMENTAL ACCOUNTABILITY; MAJOR SOURCE PRECONSTRUCTION REVIEW AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS

''SEC. 481. NATIONAL EMISSION STANDARDS FOR AFFECTED UNITS.

''(a) DEFINITIONS.—For purposes of this section:

''(1) The term 'commenced,' with regard to construction, means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction. For boilers and integrated gasification combined cycle plants, this term does not include undertaking such a program or entering into such an obligation more than 36 months prior to the date on which the unit begins operation. For combustion turbines, this term does not include undertaking such a program or entering into such an obligation more than 18

months prior to the date on which the unit begins operation.

''(2) The term 'construction' means fabrication, erection, or installation of an affected unit.

''(3) The term 'affected unit' means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D.

''(4) The term 'existing affected unit' means any affected unit that is not a new affected unit.

''(5) The term 'new affected unit' means any affected unit, the construction or reconstruction of which is commenced after the date of enactment of the Clear Skies Act of 2003, except that for the purpose of any revision of a standard pursuant to subsection (e), 'new affected unit' means any affected unit, the construction or reconstruction of which is commenced after the public of regulations (or, if earlier, proposed regulations) prescribing a standard under this section that will apply to such unit.

''(6) The term 'reconstruction' means the replacement of components of a unit to such an extent that:

''(A) the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new unit; and

''(B) it is technologically and economically feasible to meet the applicable standards set forth in this section.

''(b) EMISSION STANDARDS.—

''(1) IN GENERAL.—No later than 12 months after the date of enactment of the Clear Skies Act of 2003, the Administrator shall promulgate regulations prescribing the standards in subsections (c) through (d) for the specified affected units and establishing requirements to ensure compliance with these standards, including monitoring, recordkeeping, and reporting requirements.

''(2) MONITORING.—(A) The owner or operator of any affected unit subject to the standards for sulfur dioxide, nitrogen oxides, or mercury under this section shall meet the requirements of section 405, except that, where two or more units utilize a single stack, separate monitoring shall be required for each affected unit for the pollutants for which the unit is subject to such standards.

''(B) The Administrator shall, by regulation, require—

''(i) the owner or operator of any affected unit subject to the standards for sulfur dioxide, nitrogen oxides, or mercury under this section to—

''(I) install and operate CEMS for monitoring output, including electricity and useful thermal energy, on the affected unit and to quality assure the data; and

''(II) comply with recordkeeping and reporting requirements, including provisions for reporting output data in megawatt hours.

''(ii) the owner or operator of any affected unit subject to the standards for particulate matter under this section to—

''(I) install and operate CEMS for monitoring particulate matter on the affected unit and to quality assure the data;

''(II) comply with recordkeeping and reporting requirements; and

''(III) comply with alternative monitoring, quality assurance, recordkeeping, and reporting requirements for any period of time for which the Administrator determines that CEMS with appropriate vendor guarantees are not commercially available for particulate matter.

''(3) COMPLIANCE.—For boilers, integrated gasification combined cycle plants, and combustion turbines that are gas-fired or coal fired, the Administrator shall require that the owner or operator demonstrate compliance with the standards daily, using a 30-day rolling average, except that in the case of mercury, the compliance period shall be the calendar year. For combustion turbines that are not gas-fired or coal-fired, the Administrator shall require that the owner or operator demonstrate compliance with the standards hourly, using a 4-hour rolling average.

''(c) BOILERS AND INTEGRATED GASIFICATION COMBINED CYCLE PLANTS.—

''(1) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any boiler or integrated gasification combined cycle plant that is a new affected unit to discharge into the atmosphere any gases which contain—

''(A) sulfur dioxide in excess of 2.0 lb/MWh;

''(B) nitrogen oxides in excess of 1.0 lb/MWh;

''(C) particulate matter in excess of 0.20 lb/MWh; or

''(D) if the unit is coal-fired, mercury in excess of 0.015 lb/GWh, unless—

''(i) mercury emissions from the unit, determined assuming no use of on-site or offsite pre-combustion treatment of coal and no use of technology that captures mercury, are reduced by 80 percent;

''(ii) flue gas desulfurization (FGD) and selective catalytic reduction (SCR) are applied to the unit and are operated so as to optimize capture of mercury; or

''(iii) a technology is applied to the unit and operated so as to optimize capture of mercury, and the permitting authority determines that the technology is equivalent in terms of mercury capture to the application of FGD and SCR.

''(2) Notwithstanding paragraph (1)(D), integrated gasification combined cycle plants with a combined capacity of less than 5 GW are exempt from the mercury requirement under subparagraph (1)(D) if they are constructed as part of a demonstration project under the Secretary of Energy that will include a demonstration of removal of significant amounts of mercury as determined by the Secretary of Energy in conjunction with the Administrator as part of the solicitation process.

''(3) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any oil-fired boiler that is an existing affected unit to discharge into the atmosphere any gases which contain particulate matter in excess of 0.30 lb/MWh.

''(d) COMBUSTION TURBINES.—

''(1) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any gas-fired combustion turbine that is a new affected unit to discharge into the atmosphere any gases which contain nitrogen oxides in excess of—

''(A) 0.56 lb/MWh (15 ppm at 15 percent oxygen), if the unit is a simple cycle combustion turbine;

''(B) 0.084 lb/MWh (3.5 ppm at 15 percent oxygen), if the unit is not a simple cycle combustion turbine and either uses add-on controls or is located within 50 km of a class I area; or

''(C) 0.21 lb/MWh (9 ppm at 15 percent oxygen), if the unit is not a simple cycle turbine and neither uses add-on controls nor is located within 50 km of a class I area.

''(2) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any coal-fired combustion turbine that is a new affected unit to discharge into the atmosphere any gases which contain sulfur dioxide, nitrogen oxides, particulate matter, or mercury in excess of the emission limits under subparagraphs (c)(1) (A) through (D).

''(3) After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any combustion turbine that is not gas-fired or coal-fired and that is a new affected unit to discharge into the atmosphere any gases which contain—

''(A) sulfur dioxide in excess of 2.0lb/MWh;

''(B) nitrogen oxides in excess of—

''(i) 0.289 lb/MWh (12 ppm at 15 percent oxygen), if the unit is not a simple cycle combustion turbine, is dual-fuel capable, and uses add-on controls; or is not a simple cycle combustion turbine and is located within 50 km of a class I area;

''(ii) 1.01 lb/MWh (42 ppm at 15 percent oxygen), if the unit is a simple cycle combustion turbine; is not a simple cycle combustion turbine and is not dual-fuel capable; or is not a simple cycle combustion turbine, is dual-fuel capable, and does not use add-on controls.

''(C) particulate matter in excess of 0.20 lb/MWh.

''(e) PERIODIC REVIEW AND REVISION.—

''(1) The Administrator shall, at least every 8 years following the promulgation of standards under subsection (b), review and, if appropriate, revise such standards to reflect the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impacts and energy requirements) the Administrator determines has been adequately demonstrated. When implementation and enforcement of any requirement of this Act indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

''(2) Notwithstanding the requirements of paragraph (1) the Administrator need not review any standard promulgated under subsection (b) if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard.

''(f) EFFECTIVE DATE.—Standard promulgated pursuant to this section shall become effective upon promulgation.

''(g) DELEGATION.—

''(1) Each State may develop and submit to the Administration a procedure for implementing and enforcing standards promulgated under this section for affected units located in such State. If the Administrator finds the State procedure is adequate, the Administrator shall delegate to such State any authority the Administrator has under this Act to implement and enforce such standards.

''(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard under this section.

''(h) VIOLATIONS.—After the effective date of standards promulgated under this section, it shall be unlawful for any owner or operator of any affected unit to operate such unit in violation of any standard applicable to such unit.

''(i) COORDINATION WITH OTHER AUTHORITIES.—For purposes of sections 111(e), 113, 114, 116, 120, 303, 304,307 and other provisions for the enforcement of this Act, each standard established pursuant to this section shall be treated in the same manner as a standard of performance under section 111, and each affected unit subject to standards under this section shall be treated in the same manner as a stationary source under section 111.

''(j) STATE AUTHORITY.—Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation, or standard relating to affected units that is more stringent than a regulation, requirement, limitation, or standard in effect under this section or under any other provision of this Act.

''(k) OTHER AUTHORITY UNDER THIS ACT.—Nothing in this section shall diminish the authority of the Administrator or a State to establish any other requirements applicable to affected units under any other authority of law, including the authority to establish for any air pollutant a national ambient air quality standard, except that no new affected unit subject to standards under this section shall be subject to standards under section 111 of this Act.

''SEC. 482. RESEARCH, ENVIRONMENTAL MONITORING, AND ASSESSMENT.

''(a) PURPOSES.—The Administrator, in collaboration with the Secretary of Energy and the Secretary of the Interior, shall conduct a comprehensive program of research, environmental monitoring, and assessment to enhance scientific understanding of the human health and environmental effects of particulate matter and mercury and to demonstrate the efficacy of emission reductions under this title. The purposes of such a program are to—

''(1) expand current research and knowledge of the contribution of emissions from electricity generation to exposure and health effects associated with particulate matter and mercury;

''(2) enhance current research and development of promising multi-pollutant control strategies and CEMS for mercury;

''(3) produce peer-reviewed scientific and technology information to inform the review of emissions levels under section 410;

''(4) improve environmental monitoring and assessment of sulfur dioxide, nitrogen oxides and mercury, and their transformation products, to track changes in human health and the environment attributable to emission reductions under this title; and

''(5) periodically provide peer-reviewed reports on the costs, benefits, and effectiveness of emission reductions achieved under this title.

''(b) RESEARCH.—The Administrator shall enhance planned and ongoing laboratory and field research and modeling analyses, and conduct new research and analyses to produce peer-reviewed information concerning the human health and environmental effects of mercury and particulate matter and the contribution of United States electrical generating units to those effects. Such information shall be included in the report under subsection (d). In addition, such research and analyses shall—

''(1) improve understanding of the rates and processes governing chemical and physical transformations of mercury in the atmosphere, including speciation of emissions from electricity generation and the transport of these species;

''(2) improve understanding of the contribution of mercury emissions from electricity generation to mercury in fish and other biota, including—

''(A) the response of and contribution to mercury in the biota owing to atmospheric deposition of mercury from U.S. electricity generation on both local and regional scales;

''(B) long-term contributions of mercury from U.S. electricity generation on mercury accumulations in ecosystems, and the effects of mercury reductions in that sector on the environment and public health;

''(C) the role and contribution of mercury, from U.S. electricity generating facilities and anthropogenic and natural sources to fish contamination and to human exposure, particularly with respect to sensitive populations;

''(D) the contribution of U.S. electricity generation to population exposure to mercury in freshwater fish and seafood and quantification of linkages between U.S. mercury emissions and domestic mercury exposure and its health effects; and

''(E) the contribution of mercury from U.S. electricity generation in the context of other domestic and international sources of mercury, including transport of global anthropogenic and natural background levels;

''(3) improve understanding of the health effects of fine particulate matter components related to electricity generation emissions (as distinct from other fine particle fractions and indoor air exposures) and the contribution of U.S. electrical generating units to those effects including—

''(A) the chronic effects of fine particulate matter from electricity generation in sensitive population groups; and

''(B) personal exposure to fine particulate matter from electricity generation; and

''(4) improve understanding, by way of a review of the literature, of methods for valuing human health and environmental benefits associated with fine particulate matter and mercury.

''(c) INNOVATIVE CONTROL TECHNOLOGIES.—The Administrator shall collaborate with the Secretary of Energy to enhance research and development, and conduct new research that facilitates research into and development of innovative technologies to control sulfur dioxide, nitrogen oxides, mercury, and particulate matter at a lower cost than existing technologies. Such research and development shall provide updated information on the cost and feasibility of technologies. Such information shall be included in the report under subsection (d). In addition, the research and development shall—

''(1) upgrade cost and performance models to include results from ongoing and future electricity generation and pollution control demonstrations by the Administrator and the Secretary of Energy;

''(2) evaluate the overall environmental implications of the various technologies tested including the impact on the characteristics of coal combustion residues;

''(3) evaluate the impact of the use of selective catalytic reduction on mercury emissions from the combustion of all coal types;

''(4) evaluate the potential of integrated gasification combined cycle to adequately control mercury;

''(5) expand current programs by the Administrator to conduct research and promote, lower cost CEMS capable of providing real-time measurements of both speciated and total mercury and integrated compact CEMS that provide cost-effective real-time measurements of sulfur dioxide, nitrogen oxides, and mercury;

''(6) expand lab- and pilot-scale mercury and multi-pollutant control programs by the Secretary of Energy and the Administrator, including development of enhanced sorbents and scrubbers for use on all coal types;

''(7) characterize mercury emissions from low-rank coals, for a range of traditional control technologies, like scrubbers and selective catalytic reduction; and

''(8) improve low cost combustion modifications and controls for dry-bottom boilers.

''(d) EMISSIONS LEVELS EVALUATION REPORT.—Not later than January 1, 2008, the Administrator, in consultation with the Secretary of Energy, shall prepare a peer reviewed report to inform review of the emissions levels under section 410. The report shall be based on the best available peer-reviewed scientific and technology information. It shall address cost, feasibility, human health and ecological effects, and net benefits associated with emissions levels under this title.

''(e) ENVIRONMENTAL ACCOUNTABILITY.—

''(1) MONITORING AND ASSESSMENT.—The Administrator shall conduct a program of environmental monitoring and assessment to track on a continuing basis, changes in human health and the environment attributable to the emission reductions required under this title. Such a program shall—

''(A) develop and employ methods to routinely monitor, collect, and compile data on the status and trends of mercury and its transformation products in emissions from affected facilities, atmospheric deposition, surface water quality, and biological systems. Emphasis shall be placed on those methods that—

''(i) improve the ability to routinely measure mercury in dry deposition processes;

''(ii) improve understanding of the spatial and temporal distribution of mercury deposition in order to determine source-receptor relationships and patterns of long-range, regional, and local deposition;

''(iii) improve understanding of aggregate exposures and additive effects of methylmercury and other pollutants; and

''(iv) improve understanding of the effectiveness and cost of mercury emissions controls;

''(B) modernize and enhance the national air quality and atmospheric deposition monitoring networks in order to cost-effectively expand and integrate, where appropriate, monitoring capabilities for sulfur, nitrogen, and mercury to meet the assessment and reporting requirements of this section;

''(C) perform and enhance long-term monitoring of sulfur, nitrogen, and mercury, and parameters related to acidification, nutrient enrichment, and mercury bioaccumulation in freshwater and marine biota;

''(D) maintain and upgrade models that describe the interactions of emissions with the atmosphere and resulting air quality implications and models that describe the response of ecosystems to atmospheric deposition; and

''(E) assess indicators of ecosystems health related to sulfur, nitrogen, and mercury, including characterization of the causes and effects of episodic exposure to air pollutants and evaluation of recovery.

''(2) REPORTING REQUIREMENTS.—Not later than January 1, 2008, and not later than every 4 years thereafter, the Administrator shall provide a peer reviewed report to the Congress on the costs, benefits, and effectiveness of emission reduction programs under this title. The report shall address the relative contribution of emission reductions from U.S. electricity generation under this title compared to the emission reductions achieved under other titles of the Clean Air Act with respect to—

''(A) actual and projected emissions of sulfur dioxide, nitrogen oxides, and mercury;

''(B) average ambient concentrations of sulfur dioxide and nitrogen oxides transformation products, related air quality parameters, and indicators of reductions in human exposure;

''(C) status and trends in total atmospheric deposition of sulfur, nitrogen, and mercury, including regional estimates of total atmospheric deposition;

''(D) status and trends in visibility;

''(E) status of terrestrial and aquatic ecosystems (including forests and forested watersheds, streams, lakes, rivers, estuaries, and near-coastal waters);

''(F) status of mercury and its transformation products in fish;

''(G) causes and effects of atmospheric deposition, including changes in surface water quality, forest and soil conditions;

''(H) occurrence and effects of coastal eutrophication and episodic acidification, particularly with respect to high elevation watersheds; and

''(I) reduction in atmospheric deposition rates that should be achieved to prevent or reduce adverse ecological effects.

"SEC. 483. EXEMPTION FROM MAJOR SOURCE PRECONSTRUCTION REVIEW REQUIREMENTS AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS.

''(a) MAJOR SOURCE EXEMPTION.—An affected unit shall not be considered a major emitting facility or major stationary source, or a part of a major emitting facility or major stationary source for purposes of compliance with the requirements of parts C and part D of title I. This exemption only applies to units that are either subject to the performance standards of section 481 or meet the following requirements within 3 years after the date of enactment of the Clear Skies Act of 2003:

''(1) The owner or operator of the affected unit properly operates, maintains and repairs pollution control equipment to limit emissions of particulate matter, or the owner or operator of the affected unit is subject to an enforceable permit issued pursuant to title V or a permit program approved or promulgated as part of an applicable implementation plan to limit the emissions of particular matter from the affected unit to 0.03 lb/mmBtu within 8 years after the date of enactment of the Clear Skies Act of 2003, and

''(2) The owner or operator of the affected unit uses good combustion practices to minimize emissions of carbon monoxide.

''(b) CLASS I AREA PROTECTIONS.—Notwithstanding the exemption in subsection (a), an affected unit located within 50 km of a Class I area on which construction commences after the date of enactment of the Clear Skies Act of 2003 is subject to those provisions under part C of title I pertaining to the review of a new or modified major stationary source's impact on a Class I area.

''(c) PRECONSTRUCTION REQUIREMENTS.—Each State shall include in its plan under section 110, as program to provide for the regulation of the construction of an affected unit that ensures that the following requirements are met prior to the commencement of construction of an affected unit—

''(1) in an area designated as attainment or unclassifiable under section 107(d), the owner or operator of the affected unit must demonstrate to the State that the emissions increase from the construction or operation of such unit will not cause, or contribute to, air pollution in excess of any national ambient air quality standard;

''(2) in an area designated as nonattainment under section 107(d), the State must determine that the emissions increase from the construction or operation of such unit will not interfere with any program to assure that the national ambient air quality standards are achieved;

''(3) for a modified unit, the unit must comply prior to beginning operation with either the performance standards of section 481 or best available control technology as defined in part C of title I for the pollutants whose hourly emissions will increase at the unit's maximum capacity; and

''(4) the State must provide for an opportunity for interested persons to comment on the Class I area protections and preconstruction requirements as set forth in this section.

''(d) DEFINITIONS.—For purposes of this section:

''(1) The term 'affected unit' means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D.

''(2) The term 'construction' includes the construction of a new affected unit and the modification of any affected unit.

''(3) The term 'modification' means any physical change in, or change in the method of operation of, an affected unit that increases the maximum hourly emissions of any pollutant regulated under this Act above the maximum hourly emissions achievable at that unit during the 5 years prior to the change or that results in the emission of any pollutant regulated under this Act and not previously emitted.

''(e) SAVINGS CLAUSE.—Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt to enforce any regulation, requirements, limitation, or standard relating to affected units that is more stringent than a regulation, requirement, limitation, or standard in effect under this section or under any other provision of this Act.''.

SEC. 3. OTHER AMENDMENTS.

(a) Title I of the Clean Air Act is amended as follows:

(1) In section 103 by repealing subparagraphs (E) and (F).

(2) In section 107—

(A) By amending subparagraph (A) of subsection (d)(1) as follows:

(i) strike ''or'' at the end of clause (ii);

(ii) strike the period at the end of clause (iii) and insert '', or'';

(iii) add the following clause (iv) after clause (iii):

''(iv) notwithstanding clauses (i) through (iii), an area may be designated transitional for the PM 2.5 national primary or secondary ambient air quality standards or the 8-hour ozone national primary or secondary ambient air quality standard if the Administrator has performed air quality modeling and, in the case of an area that needs additional local control measures, the State has performed supplemental air quality modeling, demonstrating that the area will attain the applicable standard or standards no later than December 31, 2015, and such modeling demonstration and all necessary local controls have been approved into the State implementation plan no later than December 31, 2004.''.

(iv) add at the end a sentence to read as follows: ''For purposes of the PM 2.5 national primary or secondary ambient air quality standards, the time period for the State to submit the designations shall be extended to no later than December 31, 2003.''.

(B) By amending clause (i) of subsection (d)(1)(B) by adding at the end a sentence to read as follows: ''The Administrator shall not be required to designate areas for the revised PM 2.5 national primary or secondary ambient air quality standards prior to 6 months after the States are required to submit recommendations under section 107(d)(1)(A), but in no event shall the period for designating such areas be extended beyond December 31, 2004.''.

(3) In section 110 as follows:

(A) By amending clause (i) of subsection (a)(2)(D) by inserting ''except as provided in subsection (q),'' before the word ''prohibiting''.

(B) By adding the following new subsections at the end thereof:

''(q) REVIEW OF CERTAIN PLANS.—(1) The Administrator shall, in reviewing, under clause (i) of subsection (a)(2)(D), any plan with respect to affected units, within the meaning of section 126(d)(1)—

''(A) consider, among other relevant factors, emissions reductions required to occur by the attainment date or dates of any relevant nonattainment areas in the other State or States;

''(B) not require submission of plan provisions mandating emissions reductions from such affected units, unless the Administrator determines that—

''(i) emissions from such units may be reduced at least as cost-effectively as emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides, including industrial boilers, on-road mobile sources, and off-road mobile sources, and any other category of sources that the Administrator may identify, and

''(ii) reductions in such emissions will improve air quality in the other State's or States' nonattainment areas at least as cost-effectively as reductions in emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides, to the maximum extent that a methodology is reasonably available to make such a determination;

''(C) develop and appropriate peer reviewed methodology for making determinations under subparagraph (B) by December 31, 2006; and

''(D) not require submission of plan provisions subjecting affected units, within the meaning of section 126(d)(1), to requirements with an effective date prior to January 1, 2012.

''(2) In making the determination under clause (ii) of subparagraph (B) of paragraph (1), the Administrator will use the best available peer- reviewed models and methodology that consider the proximity of the source or sources to the other State or States and incorporate other source characteristics.

''(3) Nothing in paragraph (1) shall be interpreted to require revisions to the provisions of 40 CFR 51.121 and 51.122 (2001), as would be amended in the notice of proposed rulemaking at 67 Federal Register 8396 (February 22, 2002);''.

''(r) TRANSITIONAL AREAS.—

''(1) MAINTENANCE.—(A) By December 31, 2010, each area designated as transitional pursuant to section 107(d)(1) shall submit an updated emission inventory and an analysis of whether growth in emissions, including growth in vehicle miles traveled, will interfere with attainment by December 31, 2015.

''(B) No later than December 31, 2011, the Administrator shall review each transitional area's maintenance analysis, and, if the Administrator determines that growth in emissions will interfere with attainment by December 31, 2015, the Administrator shall consult with the State and determine what action, if any, is necessary to assure that attainment will be achieved by 2015.

''(2) PREVENTION OF SIGNIFICANT DETERIORATION.—Each area designated as transitional pursuant to section 107(d)(1) shall be treated as an attainment or unclassifiable area for purposes of the prevention of significant deterioration provisions of part C of this title.

''(3) CONSEQUENCES OF FAILURE TO ATTAIN BY 2015.—No later than June 30, 2016, the Administrator shall determine whether each area designated as transitional for the 8-hour ozone standard or for the PM 2.5 standard has attained that standard. If the Administrator determines that a transitional area has not attained the standard, the area shall be redesignated as nonattainment within 1 year of the determination and the State shall be required to submit a State implementation plan revision satisfying the provisions of section 172 within 3 years of redesignation as nonattainment.''.

(4) By adding to section 111(b)(1) a new subparagraph (C) to read as follows:

''(C) No standards of performance promulgated under this section shall apply to units subject to regulations promulgated pursuant to section 481.''.

(5) By amending section 112 as follows:

(A) Paragraph (1) of subsection (c) is amended to read as follows:

''(1) IN GENERAL.—Not later than 12 months after November 15, 1990, the Administrator shall publish, and shall from time to time, but not less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources

and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b). Electric utility steam generating units not subject to section 3005 of the Solid Waste Disposal Act shall not be included in any category or subcategory listed under this subsection. The Administrator shall have the authority to regulate the emission of hazardous air pollutants listed under section 112(b), other than mercury compounds, by electric utility steam generating units in accordance with the regime set forth in section 112(f)(2) through (4). Any such regulations shall be promulgated within, and shall not take effect before, the date 8 years after the commencement date of the mercury allowance requirement of section 472. To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 111 and part C. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.''.

(B) Subparagraph (A) of subsection (n)(1) is amended to read as follows:

''(A) The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) after imposition of the requirements of this Act. The Administrator shall report the results of this study to the Congress within 3 years after November 15, 1990.''.

(6) Section 126 is amended as follows:

(A) By replacing ''section 110(a)(2)(D)(ii) or this section'' in subsection (b) with ''section 110(a)(2)(D)(i)''.

(B) By replacing ''this section and the prohibition of section 110(a)(2)(D)(ii)'' in subsection (e)(1) with ''the prohibition of section 110(a)(2)(D)(i)''.

(C) In the flush language at end of subsection (c) by striking ''section 110(a)(2)(D)(ii)'' and inserting ''section 110(a)(2)(D)(i)'' and deleting the last sentence.

(D) By amending subsection (d) to read as follows:

''(d)(1) For purposes of this subsection, the term 'affected unit' means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D.

''(2) To the extent that any petition submitted under subsection (b) after the date of enactment of the Clear Skies Act of 2003 seeks a finding for any affected unit, then, notwithstanding any provision in subsections (a) through (c) to the contrary—

''(A) in determining whether to make a finding under subsection (b) for any affected unit, the Administrator shall consider, among other relevant factors, emissions reductions required to occur by the attainment date or dates of any relevant nonattainment areas in the petitioning State or political subdivision;

''(B) the Administrator may not determine that affected units emit, or would emit, any air pollutant in violation of the prohibition of section 110(a)(2)(D)(i) unless that Administrator determines that—

''(i) such emissions may be reduced at least as cost-effectively as emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides, including industrial boilers, on-road mobile sources, and off-road mobile sources, and any other category of sources that the Administrator may identify; and

''(ii) reductions in such emissions will improve air quality in the petitioning State's nonattainment area or areas at least as cost-effectively as reductions in emissions from each other principal category of sources of sulfur dioxide or nitrogen oxides to the maximum extent that a methodology is reasonably available to make such a determination.

In making the determination under clause (ii), the Administrator shall use the best available peer-reviewed models and methodology that consider the proximity of the source or sources to the petitioning State or political subdivision and incorporate other sources characteristics.

''(C) The Administrator shall develop an appropriate peer reviewed methodology for making determinations under subparagraph (B) by December 31, 2006.

''(D) The Administrator shall not make any findings with respect to an affected unit under this section prior to January 1, 2009. For any petition submitted prior to January 1, 2007, the Administrator shall make a finding or deny the petition by the January 31, 2009.

''(E) The Administrator, by rulemaking, shall extend the compliance and implementation deadlines in subsection (c) to the extent necessary to assure that no affected unit shall be subject to any such deadline prior to January 1, 2012.''.

(b) TITLE III.—Section 307(d)(1)(G) of title III of the Clean Air Act is amended to read as follows:

''(G) the promulgation or revision of any regulation under title IV,''.

(c) NOISE POLLUTION.—Title IV of the Clean Air Act (relating to noise pollution) (42 U.S.C. 7641 et seq.) is redesignated as title VII and amended by renumbering sections 401 through 403 as sections 701 through 703, respectively.

(d) SECTION 406.—Title IV of the Clean Air Act Amendments of 1990 (relating to acid deposition control) is amended by repealing section 406 (industrial SO_2 emissions).

(e) MONITORING.—Section 821(a) of title VIII of the Clean Air Act Amendments of 1990 (miscellaneous provisions) is amended by modifying section 821(a) to read as follows:

''(a) MONITORING.—The Administrator of the Environmental Protection Agency shall promulgate regulations within 18 months after November 15, 1990, to require that all affected sources subject to subpart 1 of part B of title IV of the Clean Air Act as of December 31, 2009, shall also monitor carbon dioxide emissions according to the same timetable as in section 405(b). The regulations shall require that such data be reported to the Administrator. The provisions of section 405(e) of title IV of the Clean Air Act shall apply for purposes of this section in the same manner and to the same extent as such provision applies to the monitoring and data referred to in section 405. The Administrator shall implement this subsection under 40 CFR part 75 (2002), amended as appropriate by the Administrator.''.

By Mr. DOMENICI (for himself, Mr. KENNEDY, Mr. COLEMAN, Mr. DAYTON, Mr. GRASSLEY, Mr. REED, Mr. COCHRAN, Mr. DODD, Mr. WARNER, Mr. REID, Mr. THOMAS, Mr. JOHNSON, Mr. SPECTER, Mr. HARKIN, Mr. LUGAR, Mr. DASCHLE, Mr. GRAHAM of South Carolina, Mrs. MURRAY, Ms. COLLINS, Ms. CANTWELL, Mr. ROBERTS, Mr. EDWARDS, Mr. CHAFEE, Mrs. LINCOLN, Mr. BENNETT, and Mr. LAUTENBERG):

S. 486. A bill to provide for equal coverage of mental health benefits with respect to health insurance coverage unless comparable limitations are imposed on medical and surgical benefits; to the Committee on Health, Education, Labor, and Pensions.

Mr. DOMENICI. Mr. President, I rise today with my friend Senator KENNEDY to introduce the ''Senator Paul Wellstone Mental Health Equitable Treatment Act of 2003.''

I have mixed emotions today, because, while we are once again fighting for parity, my long time partner, Paul Wellstone is not standing across the aisle from me. Unfortunately, my colleagues are to aware of Senator Wellstone's tragic passing last year. So, while I feel a profound sense of sadness, I also have a renewed determination to win a parity victory for the millions of Americans affected by these dreaded diseases.

The time has come to end this blatant pattern of discrimination against people merely because they suffer from a mental illness. The human brain is the organ of the mind and just like the other organs of our body, it is subject to illness. And just as we must treat illnesses to our other organs, we must also treat illnesses of the brain.

Building upon that, I would ask the following question: what if forty years ago our Nation had decided to exclude heart disease from health insurance coverage? Think about some of the wonderful things we would not be doing today like angioplasty, bypasses, and valve replacements and the millions of people helped because insurance covers these procedures.

I would submit these medical advances have occurred because insurance dollars have followed the patient through the health care system. The presence of insurance dollars has provided an enticing incentive to treat those individuals suffering from heart disease. But sadly, those suffering from a mental illness do not enjoy those same benefits of treatment and medical advances because all too often insurance discriminates against illnesses of the brain.

Individuals suffering from a mental illness face this discrimination even though medical science is in an era where we can accurately diagnosis mental illnesses and treat those afflicted so they can be productive. I simply do not understand, why with this evidence would we not cover these individuals and treat their illnesses like any other disease? There simply should not be a difference in the coverage provided by insurance companies for mental health benefits and medical benefits, merely because an individual suffers from a mental illness.

The introduction of our Bill marks a historic opportunity for us to take the next step towards mental health parity. The timing of our Bill is even more important because the second consecutive one year extension of the landmark Mental Health Parity Act of 1996 will sunset later this year.

As my colleagues know, this is an issue I have a long involvement with

and I would like to begin with a few observations.

I believe that we have made great strides in providing parity for the coverage of mental illness. However, mental illness continues to exact a heavy toll on many, many lives.

Even though we know so much more about mental illness, it can still bring devastating consequences to those it touches; their families, their friends, and their loved ones. These individuals and families not only deal with the societal prejudices and suspicions hanging on from the past, but they also must contend with unequal insurance coverage.

I would submit the Mental Health Parity Act of 1996 is a good first start, but the Act is also not working. While there may adherence to the letter of the law, there are certainly violations of the spirit of the law. For instance, ways are being found around the law by placing limits on the number of covered hospital days and outpatient visits.

That is why I believe it is time for a change.

Some will immediately say we cannot afford it or that inclusion of this treatment will cost too much. But, the facts simply do not support that conclusion. First, I would direct them to the Congressional Budget Office's, CBO, score of the bill. CBO scored the cost of the bill as 0.9 percent or less than one percent. Second, I would point out the Mental Health Parity Act of 1996 contains a provision allowing companies to no longer comply with the law if their costs increase by more than one percent. And do you know how many companies have opted out because their costs have increased by more than one percent? Less than ten companies throughout our entire country.

With that in mind I would like to share a couple of facts about mental illness with my colleagues: within the developed world, including the United States, 4 of the 10 leading causes of disability for individuals over the age of five are mental disorders; in the order of prevalence the disorders are major depression, schizophrenia, bipolar disorder, and obsessive compulsive disorder; one in every five people—more than 40 million adults—in this Nation will be afflicted by some type of mental illness; and schizophrenia alone is 50 times more common than cystic fibrosis, 60 times more common than muscular dystrophy and will strike between 2 and 3 million Americans.

Let us also look at the efficacy of treatment for individuals suffering from certain mental illnesses, especially when compared with the success rates of treatments for other physical ailments. For a long time, many who are in this field—especially on the insurance side—have behaved as if you get far better results for angioplasty than you do for treatments for bipolar illness.

Treatment for bipolar disorders—that is, those disorders characterized by extreme lows and extreme highs—have an 80 percent success rate if you get treatment, both medicine and care. Schizophrenia, the most dreaded of mental illnesses, has a 60-percent success rate in the United States today if treated properly. Major depression has a 65 percent success rate.

Let's compare those success rates to several important surgical procedures that everybody thinks we ought to be doing: Angioplasty has a 41-percent success rate and Atherectomy has a 52-percent success rate.

I would now like to take a minute to discuss the Senator Paul Wellstone Mental Health Equitable Treatment Act of 2003. The Bill seeks a very simple goal: provide the same mental health benefits already enjoyed by Federal employees.

The Bill is modeled after the mental health benefits provided through the Federal Employees Health Benefits Program, FEHBP, and expands the Mental Health Parity Act of 1996 to prohibit a group health plan from imposing treatment limitations or financial requirements on the coverage of mental health benefits unless comparable limitations are imposed on medical and surgical benefits.

Our Bill provides full parity for all categories of mental health conditions listed in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, DSM IV, with coverage being contingent on the mental health condition being included in an authorized treatment plan, the treatment plan is in accordance with standard protocols, and the treatment plan meets medical necessity determination criteria.

Like the Mental Health Parity Act of 1996, the Bill does not require a health plan to provide coverage for alcohol and substance abuse benefits. Moreover, the Bill does not mandate the coverage of mental health benefits, but rather the Bill only applies if the plan already provides coverage for mental health benefits.

In conclusion, the Bill provides mental heath benefits on par with those already enjoyed by Federal employees and members of Congress and I would urge my colleagues to support this important piece of legislation.

I ask unanimous consent that the text of the Bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 486

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Senator Paul Wellstone Mental Health Equitable Treatment Act of 2003''.

SEC. 2. AMENDMENT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) IN GENERAL.—Section 712 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185a) is amended to read as follows:

''SEC. 712. MENTAL HEALTH PARITY.

''(a) IN GENERAL.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health benefits, such plan or coverage shall not impose any treatment limitations or financial requirements with respect to the coverage of benefits for mental illnesses unless comparable treatment limitations or financial requirements are imposed on medical and surgical benefits.

''(b) CONSTRUCTION.—

''(1) IN GENERAL.—Nothing in this section shall be construed as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any mental health benefits.

''(2) MEDICAL MANAGEMENT OF MENTAL HEALTH BENEFITS.—Consistent with subsection (a), nothing in this section shall be construed to prevent the medical management of mental health benefits, including through concurrent and retrospective utilization review and utilization management practices, preauthorization, and the application of medical necessity and appropriateness criteria applicable to behavioral health and the contracting and use of a network of participating providers.

''(3) NO REQUIREMENT OF SPECIFIC SERVICES.—Nothing in this section shall be construed as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide coverage for specific mental health services, except to the extent that the failure to cover such services would result in a disparity between the coverage of mental health and medical and surgical benefits.

''(c) SMALL EMPLOYER EXEMPTION.—

''(1) IN GENERAL.—This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of any employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year.

''(2) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this subsection—

''(A) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of treating persons as a single employer.

''(B) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(C) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

''(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

''(e) IN-NETWORK AND OUT-OF-NETWORK RULES.—In the case of a plan or coverage option that provides in-network mental health benefits, out-of-network mental health benefits may be provided using treatment limitations or financial requirements that are not comparable to the limitations and requirements applied to medical and surgical benefits if the plan or coverage provides such in-

network mental health benefits in accordance with subsection (a) and provides reasonable access to in-network providers and facilities.

''(f) DEFINITIONS.—For purposes of this section—

''(1) FINANCIAL REQUIREMENTS.—The term 'financial requirements' includes deductibles, coinsurance, co-payments, other cost sharing, and limitations on the total amount that may be paid by a participant or beneficiary with respect to benefits under the plan or health insurance coverage and shall include the application of annual and lifetime limits.

''(2) MEDICAL OR SURGICAL BENEFITS.—The term 'medical or surgical benefits' means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include mental health benefits.

''(3) MENTAL HEALTH BENEFITS.—The term 'mental health benefits' means benefits with respect to services, as defined under the terms and conditions of the plan or coverage (as the case may be), for all categories of mental health conditions listed in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV–TR), or the most recent edition if different than the Fourth Edition, if such services are included as part of an authorized treatment plan that is in accordance with standard protocols and such services meet the plan or issuer's medical necessity criteria. Such term does not include benefits with respect to the treatment of substance abuse or chemical dependency.

''(4) TREATMENT LIMITATIONS.—The term 'treatment limitations' means limitations on the frequency of treatment, number of visits or days of coverage, or other similar limits on the duration or scope of treatment under the plan or coverage.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan years beginning on or after January 1, 2004.

SEC. 3. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT RELATING TO THE GROUP MARKET.

(a) IN GENERAL.—Section 2705 of the Public Health Service Act (42 U.S.C. 300gg–5) is amended to read as follows:

''SEC. 2705. MENTAL HEALTH PARITY.

''(a) IN GENERAL.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health benefits, such plan or coverage shall not impose any treatment limitations or financial requirements with respect to the coverage of benefits for mental illnesses unless comparable treatment limitations or financial requirements are imposed on medical and surgical benefits.

''(b) CONSTRUCTION.—

''(1) IN GENERAL.—Nothing in this section shall be construed as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any mental health benefits.

''(2) MEDICAL MANAGEMENT OF MENTAL HEALTH BENEFITS.—Consistent with subsection (a), nothing in this section shall be construed to prevent the medical management of mental health benefits, including through concurrent and retrospective utilization review and utilization management practices, preauthorization, and the application of medical necessity and appropriateness criteria applicable to behavioral health and the contracting and use of a network of participating providers.

''(3) NO REQUIREMENT OF SPECIFIC SERVICES.—Nothing in this section shall be construed as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide coverage for specific mental health services, except to the extent that the failure to cover such services would result in a disparity between the coverage of mental health and medical and surgical benefits.

''(c) SMALL EMPLOYER EXEMPTION.—

''(1) IN GENERAL.—This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of any employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year.

''(2) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this subsection—

''(A) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of treating persons as a single employer.

''(B) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(C) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

''(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

''(e) IN-NETWORK AND OUT-OF-NETWORK RULES.—In the case of a plan or coverage option that provides in-network mental health benefits, out-of-network mental health benefits may be provided using treatment limitations or financial requirements that are not comparable to the limitations and requirements applied to medical and surgical benefits if the plan or coverage provides such in-network mental health benefits in accordance with subsection (a) and provides reasonable access to in-network providers and facilities.

''(f) DEFINITIONS.—For purposes of this section—

''(1) FINANCIAL REQUIREMENTS.—The term 'financial requirements' includes deductibles, coinsurance, co-payments, other cost sharing, and limitations on the total amount that may be paid by a participant, beneficiary or enrollee with respect to benefits under the plan or health insurance coverage and shall include the application of annual and lifetime limits.

''(2) MEDICAL OR SURGICAL BENEFITS.—The term 'medical or surgical benefits' means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include mental health benefits.

''(3) MENTAL HEALTH BENEFITS.—The term 'mental health benefits' means benefits with respect to services, as defined under the terms and conditions of the plan or coverage (as the case may be), for all categories of mental health conditions listed in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV–TR), or the most recent edition if different than the Fourth Edition, if such services are included as part of an authorized treatment plan that is in accordance with standard protocols and such services meet the plan or issuer's medical necessity criteria. Such term does not include benefits with respect to the treatment of substance abuse or chemical dependency.

''(4) TREATMENT LIMITATIONS.—The term 'treatment limitations' means limitations on the frequency of treatment, number of visits or days of coverage, or other similar limits on the duration or scope of treatment under the plan or coverage.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to plan years beginning on or after January 1, 2004.

SEC. 4. PREEMPTION.

Nothing in the amendments made by this Act shall be construed to preempt any provision of State law, with respect to health insurance coverage offered by a health insurance issuer in connection with a group health plan, that provides protections to enrollees that are greater than the protections provided under such amendments. Nothing in the amendments made by this Act shall be construed to affect or modify section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144).

SEC. 5. GENERAL ACCOUNTING OFFICE STUDY.

(a) STUDY.—The Comptroller General shall conduct a study that evaluates the effect of the implementation of the amendments made by this Act on the cost of health insurance coverage, access to health insurance coverage (including the availability of in-network providers), the quality of health care, and other issues as determined appropriate by the Comptroller General. Such study shall also include an estimate of the cost that would be incurred if such amendments were extended in a manner so as to provide coverage for the treatment of substance abuse and chemical dependency.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Comptroller General shall prepare and submit to the appropriate committees of Congress a report containing the results of the study conducted under subsection (a).

Mr. KENNEDY. Mr. President, it is an honor to be here today with Senator DOMENICI to renew the battle in the Senate to end one of the most shameful forms of discrimination in our society discrimination against mental illness. We renew the battle in the name of our friend and colleague Paul Wellstone who did so much to advance this cause we share and whom we miss so dearly now.

Senator PETE DOMENICI and Senator Paul Wellstone led us with great skill in the Senate in this bipartisan battle in the past, and I'm proud to join Senator DOMENICI today to carry on this very important effort in the Senate.

This bill brings first class medicine to millions of Americans who have been second class patients for too long.

We know that millions of Americans across the country with mental illness faced stigma and misunderstanding. Even worse, they have been denied treatment that can cure or ease their cruel afflictions. Too often, they are the victims of discrimination by health insurance companies. It is unacceptable that the nation continues to tolerate actions by insurers that deny medical care for mental illnesses even though the very same insurers fully cover the treatment of physical illnesses that are often more costly, less debilitating and less curable. Mental illnesses are treatable and curable, and

it's high time to bring relief to those who experience them.

Equal treatment of the mentally ill is not just an insurance issue, it is a civil rights issue. At its heart, mental health parity is a question of simple justice.

The need is clear. One in five Americans will suffer some form of mental illness this year—but only one-third of them will receive treatment. According to a report of the Surgeon General, at least 4 million children suffer from a major mental illness that results in significant impairments at home, at school, and with their peers. Families must often make painful choices about how to pay for the care their child needs to live a normal life.

The cost is low. As we have seen in state after state and in the Federal Employees Health Benefits Program, insurance parity does not cause soaring insurance premiums. When parity for both mental health coverage and substance abuse coverage was provided for federal employees, they paid only $1 a month more for individual coverage and $2 for family coverage. The Congressional Budget Office has estimated that this bill will raise insurance rates by less than one percent a small cost that will bring health care and financial security to many families.

It is tragic when a child is diagnosed with any illness. It is heart wrenching for parents to watch their children suffer. The tragedy is even greater when an insurance company denies treatment for a child solely because the illness is a mental illness. It's wrong for insurance companies to promote modern medicine for physical diseases, but leave mental health in the dark ages.

It is wrong to force parents to choose between the care their child needs and the other financial needs of the family. I have heard countless stories from mothers and fathers whose children desperately needed the care that their insurance companies refused to provide.

There is hope for the future. Today we were presented with 30,000 petitions signed by young people asking Congress to provide affordable coverage for mental health services. The petitions were signed in concerts held across the country to raise awareness for suicide prevention. PETE DOMENICI and I are here today to bring hope to these parents and to these young people. It is long past time to end insurance discrimination, and guarantee all people with mental illnesses the coverage they deserve.

By Mr. DORGAN (for himself, Mr. BREAUX, Mr. DURBIN, Mr. LEAHY, Mr. HARKIN, and Mr. JOHNSON):

S. 488. A bill to amend the Internal Revenue Code of 1986 to provide a 5-year extension of the credit for electricity produced from wind; to the Committee on Finance.

Mr. DORGAN. Mr. President, today, I am joined by Senators BREAUX, DURBIN, LEAHY, HARKIN and JOHNSON in introducing legislation to extend the current federal wind energy production tax credit, PTC, for an additional five years. This tax credit is scheduled to expire at the end of the year. A long-term extension of the credit will give wind energy developers the certainty they need to grow this important domestic industry with its seemingly limitless energy potential.

One of the most promising alternative energy sources on this country's horizon comes from one of nature's most abundant assets: the wind. Over 2,000 megawatts of new wind energy capacity has been added to the nation's electricity grid in just the last 2 years. This new wind generation has pumped over $2 billion into the struggling economy.

Congress has helped promote wind energy by making significant financial investments in Federal research and private-sector development over the last decade. Among other things, Congress has provided a Federal income tax credit for facilities that produce electricity from wind, which allows them to bring state-of-the-art wind turbines to the marketplace at a competitive rate.

More and more utilities that have produced electricity from traditional fossil fuels are now looking to wind energy and other alternative energy sources to meet a larger share of this country's future energy demands. Soaring oil and natural gas prices also remind us of the importance of reducing our reliance on foreign energy sources and keeping a diverse energy supply here at home.

However, despite broad bipartisan congressional support for the wind energy production tax credit, its fate remains cloudy. As I mentioned, the wind energy tax credit is scheduled to expire at the end of the year. Congress will surely extend the credit. But we can't wait until the last day of the session—or even later—to do so.

Unfortunately, this is not merely polemics. Congress has twice allowed the PTC to expire. First, Congress allowed it to expire in July 1999 and failed to reinstate it until December 1999. As a result, wind energy investments plummeted from 661 megawatts installed in 1999 to only 53 megawatts in 2000. Inexplicably, the Congress let the PTC expire a second time—at the end of 2001—and did not reinstate the credit until March of the following year. This failure contributed to another major drop in wind investments dropping from 1696 megawatts installed in 2001 to just 410 megawatts in 2002.

Today, wind energy industry officials tell me that if we do not extend the production tax credit by mid-year, thousands of jobs and billions of dollars in economic activity would be lost. And this shouldn't come as a surprise to my Senate colleagues. For many years, wind energy developers have told us that one of the major stumbling blocks to greater deployment of new wind technologies is the continued uncertainty surrounding the availability of the wind energy production tax credit. Even so, we still provided for just another short-term extension of the tax credit last March. A few short months from now, financial lenders will stop providing needed capital to new wind initiatives. As a result, projects already underway will quickly come to a halt, while new projects will be shelved. Many developers will simply be unable to build and purchase equipment and secure the financing that is needed to bring wind turbine generators on-line by year's end.

When the tax credit last expired, I heard from manufacturers in my state and across the nation about impending layoffs, because of the lack of certainty at that time. A tower developer in my state of North Dakota has again laid off 17 workers, because of the uncertainty this industry still faces, due to the soon-to-expire tax credit. We can help eliminate this uncertainty by extending the production tax credit for a longer term.

If we fail to act promptly to extend the tax credit this time around, North Dakota's wind energy industry would suffer another serious economic blow. I am told that DMI Industries, a major producer of wind turbine towers in North Dakota, would experience a 40-percent drop in business activity, resulting in some $15 million in lost revenue. The company's plan to expand its operation by 75 employees in 2004 would also be derailed. Delay in extending the production tax credit would mean that 100–125 new jobs would not be created in the coming year by LM Glasfiber, which is a major blade manufacturer in Grand Forks.

There is a great deal of discussion in Washington, D.C. about passing a stimulus package to provide a needed boost to our ailing economy. This very effort would be needlessly undermined if we fail to extend the wind energy production tax credit in a timely manner and make it available over the long term.

In North Dakota, we put up several wind turbines last year and launched an 80-megawatt project for North Dakota and South Dakota. At a time when this industry is just beginning to ramp up in the Great Plains, it would be foolish to thwart these efforts by failing to extend this wind energy production tax credit for sufficient time to get substantial new projects off the design boards and up and running.

Again, the bill I'm introducing today would extend the current production tax credit for qualifying wind facilities that are placed in service on or before December 31, 2008. The wind energy production tax credit has enjoyed strong bipartisan support in both the Senate and the House of Representatives in previous years, so we should be able to pass this legislation quickly this year.

I urge my Senate colleagues to cosponsor this legislation and work with me to get it enacted into law as soon as

possible. If we fail to act promptly, many new wind energy initiatives will come to a halt at a time when this country can least afford it.

By Mr. DEWINE (for himself, Mr. GRAHAM of Florida, Mr. LUGAR, Mr. DURBIN, Mr. CHAFEE, and Mr. NELSON of Florida):

S. 489. A bill to expand certain preferential trade treatment for Haiti; to the Committee on Finance.

HAITI ECONOMIC RECOVERY OPPORTUNITY ACT OF 2003

Mr. DEWINE. Mr. President, I returned this week from my 12th trip to Haiti. As my colleagues are aware, I have many long-standing concerns about the dire political, economic, and humanitarian situation in Haiti.

In a nation just over an hour's flight from Miami, there is abject poverty, suffering, and disease. We absolutely must pay closer attention to what is happening to our neighbors in our hemisphere. We must be engaged.

That is why I am so pleased to be joining several of my Senate and House colleagues in introducing the ''Haiti Economic Recovery Opportunity Act of 2003.'' I'd like to thank our Senate Cosponsors, who include Senators GRAHAM of Florida, LUGAR, DURBIN, NELSON of Florida, and Representatives Congressmen SHAW and CONYERS for their leadership in getting support for this bill, as well as our other House Cosponsors, Representatives CRANE, RANGEL, WATSON, LEE of California, LEE of Texas, MEEK, GOSS, FOLEY, WATERS, and Delegate CHRISTENSEN of the Virgin Islands.

Our bill would take a major step in improving the economic and political situation in Haiti through an important tool of our foreign policy—and that is trade.

As my colleagues, Senators DURBIN, NELSON, and CHAFEE, and Representative MEEK—all of whom traveled with me to Haiti over the course of this last month—the situation in Haiti is bleak. Haiti is the poorest country in our Hemisphere, with approximately 70 percent of its population out of work and 80 percent living in abject poverty. Less than one-half of Haiti's 7 million people can read or write. Haiti's infant mortality rate is the highest in our hemisphere. And one in four children under the age of five are malnourished.

roughly one in 12 Haitians has HIV/AIDS and, according to the Centers for Disease Control projections, Haiti will experience up to 44,000 new HIV/AIDS cases this year—that's 4,000 more than the number expected here in the United States, where our population is 35 times that of Haiti's. AIDS already has orphaned over 200,000 children, and this number is expected to skyrocket to between 323,000 and 393,000 over the next ten years.

The violence, corruption, and instability caused by the flow of drugs through Haiti cannot be overstated. An estimated 15 percent of all cocaine entering the United States passes through Haiti, the Dominican Republic, or both.

All of this creates an environment where the logical course of action for many Haitians is simply to flee. We have seen this in the past, and we may see it again. So far this fiscal year, the Coast Guard has interdicted and rescued over 813 Haitian migrants at sea—compared to 1,113 during the entire fiscal year 2000. And, according to the State Department, migrants recently interdicted and repatriated to Haiti have cited economic conditions as their reason for attempting to migrate by sea. I do not think that a mass exodus is imminent, but we cannot ignore any increase in migrant departures from Haiti. In addition to being an immigration issue for the United States, these migrant departures frequently result in the loss of life at sea.

When I visited Haiti last month, we toured a textile assembly factor. What we saw was that this operation was providing about 800 Haitian laborers with jobs and giving them an income to help support their families. This is in a country that went from having 100,000 assembly jobs to only 30,000 today. There is no reason we can't reverse that trend.

The bill we are introducing today attempts to change the economic situation by granting limited duty-free treatment on certain Haitian apparel articles if—and only if—the President is able to certify that the Haitian government is making serious market, political, and social reforms. The bill would correct a glitch or oversight in U.S. trade law that recognized the special economic needs of least developed countries in Africa, but did not recognize those needs for the least developed country in the Western Hemisphere—Haiti.

Specifically, the bill would allow duty-free entry of Haitian apparel articles assembled from fabrics from countries with which the U.S. has a free trade or a regional trade agreement. It also would grant duty-free status on articles, regardless of the origin of the fabrics and yarns, if the fabrics and yarns were not commercially available in the United States.

The bill would cap duty-free apparel imports made of fabrics and yarns from the designated countries at 1.5 percent of total U.S. apparel imports. This limit grows modestly over time to 3.5 percent.

The enactment of this legislation would promote employment in Haitian industry by allowing the country to become a garment production center. While the benefits of bill would be modest by U.S. standards, in Haiti they are substantial. It is estimated that the bill could create thousands of jobs, thereby reducing the unemployment rate and breaking the shackles of poverty. Before the 1991 coup, Haiti was one of the largest apparel suppliers in the Caribbean. Today, Haitian apparel accounts for less than one percent of all apparel imports into the United States.

The type of assembly carried out in Haiti would have minimal impact on employment in the United States. Actually, it would encourage the emigration of jobs from the Far East back to our hemisphere, including the United States, because most Haitian foreign exchange earnings, unlike in the Far East, are utilized to purchase American products. And, the ''Trade and Development Act'' already includes strong safeguards against transshipment.

In order for Haiti to be eligible for the trade benefits under the bill, the President must certify that Haiti is making progress on matters like the rule of law. This will not be an easy task for the Haitian government. However, I believe that because of the incentives provided in the bill, it would be more and more apparent to them that it is in their interest to reform.

Adopting the Haiti Economic Recovery Opportunity Act of 2002 would be a powerful demonstration of our commitment to helping reverse the downward spiral in Haiti. I encourage my colleagues to join in support of this legislation.

By Mr. REID (for himself and Mr. ENSIGN):

S. 490. A bill to direct the Secretary of Agriculture to convey certain land in the Lake Tahoe Basin Management Unit, Nevada, to the Secretary of the Interior, in trust for the Washoe Indian Tribe of Nevada and California; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today to reintroduce the Washoe Tribe Land Conveyance Act.

I introduced this bill in both the 106th and 107th Congress, and it passed the Senate unanimously in 2000 and 2002. The bill has also been favorably received in the House: in the 106h Congress, it passed the House with unrelated amendments. Unfortunately, due to a shortage of time, the two versions of the bill were never reconciled and neither version became law.

In 1997, I helped convene the Lake Tahoe Presidential Forum to discuss the future of the Lake Tahoe Basin. At that Forum a diverse group of federal, state, and local government leaders considered the challenges facing the extraordinary natural, recreational, and ecological resources of the Lake Tahoe region. I am pleased to note that the Forum provided the basis for the Lake Tahoe Restoration Act that Senator FEINSTEIN and I introduced and President Clinton signed into law. This law authorizes $300 million of federal investment to protect and rehabilitate the Lake over a ten-year period. In addition, I have been able to steadily increase the federal investment in the Basin. We are well on our way to fulfilling the promises of the Forum.

During the Forum a commitment was made to support the traditional

and customary sues of the Lake Tahoe Basin by the Washoe Tribe, most importantly, to provide the Tribe access to the shore of Lake Tahoe for cultural purposes. In short, this is not a controversial bill. It is a good bill, and it is the right thing to do.

The ancestral homeland of the Washoe Tribe of Nevada and California included an area of over 5,000 square miles in and around the Lake Tahoe Basin. My bill ensures that members of the Tribe will have the opportunity to engage in their traditional and customary cultural practices at the Lake in the future as they have done in the past. This will help the tribe meet the needs of spiritual renewal, land stewardship and general reunification of the Tribe with its aboriginal lands—forever. The participants in the Lake Tahoe Presidential Forum endorsed the concept of this bill, and nearly five years later that concept continues to enjoy broad support. The land conveyed by this bill to the Washoe Tribe would be managed in accordance with the Lake Tahoe Regional Plan, would not be commercially developed, and would not preclude or hinder public access around the Lake.

This Act will convey 24.3 acres from the Secretary of Agriculture to the Secretary of the Interior to be held in trust for the Washoe. This is not an expansive tract of land, but it is of profound significance to the Washoe people. I would like to point out a particular provision of the bill and explain the history behind it. Subsection (e) prohibits any type of development on the land. This provision was added at the request of the Washoe Tribe to guarantee that this land remains in its present unspoiled state for traditional and customary cultural uses. Tribal elders have indicated to me that these purposes could not be accomplished if the land were commercially developed, so I am pleased to include a provision ensuring that this land will remain in its natural state. I think this provision serves as a testimonial to the tribe's integrity and to how important the return of this land is to the Washoe people.

Finally, I would like to note that Senator ENSIGN joins me today to introduce this important bill. I know that Senator ENSIGN values and works to protect the wonders of Lake Tahoe. His support for this bill will help ensure that the third time is the charm and that we make good on this important promise to the Washoe Tribe.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 490

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WASHOE TRIBE LAND CONVEYANCE.

(a) FINDINGS.—Congress finds that—

(1) the ancestral homeland of the Washoe Tribe of Nevada and California (referred to in this Act as the ''Tribe'') included an area of approximately 5,000 square miles in and around Lake Tahoe, California and Nevada, and Lake Tahoe was the heart of the territory;

(2) in 1997, Federal, State, and local governments, together with many private landholders, recognized the Washoe people as indigenous people of Lake Tahoe Basin through a series of meetings convened by those governments at 2 locations in Lake Tahoe;

(3) the meetings were held to address protection of the extraordinary natural, recreational, and ecological resources in the Lake Tahoe region;

(4) the resulting multiagency agreement includes objectives that support the traditional and customary uses of National Forest System land by the Tribe; and

(5) those objectives include the provision of access by members of the Tribe to the shore of Lake Tahoe in order to reestablish traditional and customary cultural practices.

(b) PURPOSES.—The purposes of this Act are—

(1) to implement the joint local, State, tribal, and Federal objective of returning the Tribe to Lake Tahoe; and

(2) to ensure that members of the Tribe have the opportunity to engage in traditional and customary cultural practices on the shore of Lake Tahoe to meet the needs of spiritual renewal, land stewardship, Washoe horticulture and ethnobotany, subsistence gathering, traditional learning, and reunification of tribal and family bonds.

(c) CONVEYANCE ON CONDITION SUBSEQUENT.—Subject to valid existing rights, the easement reserved under subsection (d), and the condition stated in subsection (e), the Secretary of Agriculture shall convey to the Secretary of the Interior, in trust for the Tribe, for no consideration, all right, title, and interest in the parcel of land comprising approximately 24.3 acres, located within the Lake Tahoe Basin Management Unit north of Skunk Harbor, Nevada, and more particularly described as Mount Diablo Meridian, T15N, R18E, section 27, lot 3.

(d) EASEMENT.—

(1) IN GENERAL.—The conveyance under subsection (c) shall be made subject to reservation to the United States of a nonexclusive easement for public and administrative access over Forest Development Road #15N67 to National Forest System land, to be administered by the Secretary of Agriculture.

(2) ACCESS BY INDIVIDUALS WITH DISABILITIES.—The Secretary of Agriculture shall provide a reciprocal easement to the Tribe permitting vehicular access to the parcel over Forest Development Road #15N67 to—

(A) members of the Tribe for administrative and safety purposes; and

(B) members of the Tribe who, due to age, infirmity, or disability, would have difficulty accessing the conveyed parcel on foot.

(e) CONDITION ON USE OF LAND.—

(1) IN GENERAL.—In using the parcel conveyed under subsection (c), the Tribe and members of the Tribe—

(A) shall limit the use of the parcel to traditional and customary uses and stewardship conservation for the benefit of the Tribe;

(B) shall not permit any permanent residential or recreational development on, or commercial use of, the parcel (including commercial development, tourist accommodations, gaming, sale of timber, or mineral extraction); and

(C) shall comply with environmental requirements that are no less protective than environmental requirements that apply under the Regional Plan of the Tahoe Regional Planning Agency.

(2) TERMINATION AND REVERSION.—If the Secretary of the Interior, after notice to the Tribe and an opportunity for a hearing, based on monitoring of use of the parcel by the Tribe, makes a finding that the Tribe has used or permitted the use of the parcel in violation of paragraph (1) and the Tribe fails to take corrective or remedial action directed by the Secretary of the Interior—

(A) title to the parcel in the Secretary of the Interior, in trust for the Tribe, shall terminate; and

(B) title to the parcel shall revert to the Secretary of Agriculture.

By Mr. REID (for himself, Mr. COCHRAN, Mr. DODD, Mr. INOUYE, Ms. LANDRIEU, Mr. LOTT, and Mr. MILLER):

S. 491. A bill to expand research regarding inflammatory bowel disease, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. REID. Mr. President, I rise today for myself, Mr. COCHRAN, and our other cosponsors to re-introduce the Inflammatory Bowel Disease Act, which will advance our knowledge of this serious health condition and our ability to treat people suffering from it.

Crohn's disease and ulcerative colitis are chronic disorders of the gastrointestinal tract which represent the major causes of morbidity from digestive illness. Because they behave similarly, these disorders are collectively known as Inflammatory Bowel Disease. This devastating, yet seldom discussed illness can cause severe abdominal pain, diarrhea, fever, and bleeding in the gastrointestinal tract. Moreover, complications related to the disease can include arthritis, osteoporosis, anemia, eczema, liver disease, and even colon cancer.

We do not know the cause of Inflammatory Bowel Disease. There is no medical cure. An estimated 1 million Americans, including many children and young adults, suffer from it. In 1990, the total annual medical costs for patients suffering from Crohns Disease and ulcerative colitis amounted to over 1.6 billion dollars.

Recent medical breakthroughs, however, are opening up exciting new pathways for research to understand underlying disease mechanisms and to improve therapies for those who suffer from Inflammatory Bowel Disease. The gene for Crohn's Disease was recently discovered, and other research demonstrates that strong linkages exist between Inflammatory Bowel Disease and functions of the immune system.

Our legislation enhances research on Inflammatory Bowel Disease within the National Institute of Diabetes and Digestive and Kidney Diseases at the National Institutes of Health. Among the promising areas to be advanced are studies that translate findings from basic genetic and animal model research. The bill will also establish an Inflammatory Bowel Disease prevention and epidemiology program at the Centers for Disease Control and Prevention. This program is needed to generate an accurate analysis of the make-

up of the IBD population in the United States, thereby obtaining invaluable clues to the potential causes and risks associated with the disease.

The bill also will inform public and private health coverage policy providers by providing for a study of the coverage standards of Medicare, Medicaid, and private health insurance for therapies for Inflammatory Bowel Disease. It will be conducted by the Institute of Medicine of the National Academies of Science. In addition, the bill calls for a General Accounting Office study of the problems patients with Inflammatory Bowel Disease encounter when applying for disability insurance benefits.

This bill will benefit millions of Americans who suffer from or who are at risk of developing Inflammatory Bowel Disease. It promises to alleviate much suffering, to assist patients in accessing sound and effective medical treatment, and to benefit those who are debilitated by Inflammatory Bowel Disease.

I ask unanimous consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 491

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Inflammatory Bowel Disease Act''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Crohn's disease and ulcerative colitis are serious inflammatory diseases of the gastrointestinal tract. Crohn's disease may occur in any section of the gastrointestinal tract but is predominately found in the lower part of the small intestine and the large intestine. Ulcerative colitis is characterized by inflammation and ulceration of the innermost lining of the colon. Because Crohn's disease and ulcerative colitis behave similarly, they are collectively known as inflammatory bowel disease. Both diseases present a variety of symptoms, including severe diarrhea, crampy abdominal pain, fever, and rectal bleeding. There is no known cause of inflammatory bowel disease, or medical cure.

(2) It is estimated that up to 1,000,000 people in the United States suffer from inflammatory bowel disease.

(3) In 1990, the total annual medical costs for Crohn's disease patients was estimated at $1,000,000,000 to $1,200,000,000.

(4) In 1990, the total annual medical costs for ulcerative colitis patients was estimated at $400,000,000 to $600,000,000.

(5) Inflammatory bowel disease patients are at high-risk for developing colorectal cancer.

SEC. 3. INFLAMMATORY BOWEL DISEASE RESEARCH EXPANSION.

(a) IN GENERAL.—The Director of the National Institute of Diabetes and Digestive and Kidney Diseases shall expand, intensify, and coordinate the activities of the Institute with respect to research on inflammatory bowel disease with particular emphasis on the following areas:

(1) Genetic research on susceptibility for inflammatory bowel disease, including the interaction of genetic and environmental factors in the development of the disease.

(2) Animal model research on inflammatory bowel disease, including genetics in animals.

(3) Clinical inflammatory bowel disease research, including clinical studies and treatment trials.

(4) Other research initiatives identified by the scientific document entitled ''Challenges in Inflammatory Bowel Disease''.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—For the purpose of carrying out this section, there are authorized to be appropriated $75,000,000 in fiscal year 2004, $100,000,000 in fiscal year 2005, and such sums as may be necessary for fiscal years 2006 and 2007.

(2) RESERVATION.—Of the funds authorized to be appropriated under paragraph (1), not more than 20 percent of such funds shall be reserved to fund the training of qualified health professionals in biomedical research focused on inflammatory bowel disease and related disorders.

SEC. 4. INFLAMMATORY BOWEL DISEASE PREVENTION AND EPIDEMIOLOGY.

(a) IN GENERAL.—The Director of the Centers for Disease Control and Prevention shall establish a national program of prevention and epidemiology to determine the prevalence of inflammatory bowel disease in the United States, and conduct public and professional awareness activities on inflammatory bowel disease.

(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated $5,000,000 in fiscal year 2004, and such sums as may be necessary for fiscal years 2005 through 2007.

SEC. 5. STUDY OF INFLAMMATORY BOWEL DISEASE RELATED SERVICES.

(a) IN GENERAL.—The Institute of Medicine of the National Academics of Science shall conduct a study on the coverage standards of medicare, medicaid, and the private insurance market for the following therapies:

(1) Parenteral nutrition.

(2) Enteral nutrition formula.

(3) Medically necessary food products.

(4) Ostomy supplies.

(5) Therapies approved by the Food and Drug Administration for Crohn's disease and ulcerative colitis.

(b) CONTENT.—The study shall also take into account the appropriate outpatient or home health care delivery settings.

(c) REPORT.—Not later than 6 months after the date of enactment of this Act, the Institute of Medicine shall submit a report to Congress describing the findings of the study.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, such sums as may be necessary.

SEC. 6. SOCIAL SECURITY DISABILITY FOR INFLAMMATORY BOWEL DISEASE PATIENTS.

(a) IN GENERAL.—The General Accounting Office shall conduct a study of the problems patients encounter when applying for disability insurance benefits under title II of the Social Security Act. The study will also include recommendations for improving the application process for inflammatory bowel disease patients.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the General Accounting Office shall submit a report to Congress describing the findings of the study.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, such sums as may be necessary.

By Mrs. LINCOLN (for herself, Mr. SPECTER, Mr. ENSIGN, and Ms. LANDRIEU):

S. 493. A bill to amend title XVIII of the Social Security Act to authorize physical therapists to evaluate and treat medicare beneficiaries without a requirement for a physician referral, and for other purposes; to the Committee on Finance.

Mrs. LINCOLN. Mr. President, I am pleased to introduce the Medicare Patient Access to Physical Therapists Act of 2003, which allows Medicare beneficiaries direct access to qualified physical therapists without a physician referral, as allowed by State law. I am proud to be joined in this effort today by my friends Senators Specter, Landrieu, and Ensign.

Currently, 35 States, including my home State of Arkansas, allow for direct access to physical therapists without the added cost of a physician referral. Direct access is an important change that physical therapists and their patients are seeking to the Medicare program. The National Rural Health Association, Easter Seals, and the Brain Injury Association of America join with us today in expressing their support for this important legislation.

Currently, seniors and disabled Medicare beneficiaries must first visit a physician before being allowed to visit a physical therapist. This burdensome requirement in Medicare is simply no longer necessary and limits access to timely and medically necessary physical therapists' services. Providing Medicare beneficiaries with direct access to physical therapists should be a critical component of any Medicare reform.

Congress must consistently balance patient safety, accessibility of services from qualified providers, and costs to the Medicare program when evaluating services. State boards that regulate physical therapy confirm that patient safety is not compromised by the elimination of the referral requirement because malpractice incidents and costs are not markedly higher in States that allow direct access.

Second, direct access to physical therapists would allow for improved access to quality health care services, particularly in rural and urban underserved communities. It is a burden for elderly and disabled patients with chronic conditions to drive back and forth to a physician's office simply to obtain another referral for physical therapy. This not only disrupts patient access to timely therapy treatment but creates a needless administrative expense for the Medicare program.

Finally, a study of BlueCross/BlueShield insurance claims in Maryland indicates that services are not over-utilized when a patient has direct access to physical therapists. In fact, the study indicates significantly lower costs when care is initiated without a physician referral. With this in mind, a policy that improves access to physical

therapists is a positive reform for the Medicare program and its beneficiaries.

The Medicare program should not impose arbitrary administrative barriers to patients who need physical therapy services, especially when States have an entirely different standard for access. I encourage my colleagues to support this Medicare modernization plan to ensure the best access to physical therapy for America's most vulnerable population—senior and disabled patients.

By Mr. CRAPO:

S. 494. A bill to amend the Internal Revenue Code of 1986 to include agricultural and animal waste sources as a renewable energy resource; to the Committee on Finance.

Mr. CRAPO. Mr. President, I rise to introduce legislation that will encourage the expansion of an often overlooked domestic energy resource that offers a source of revenue for our rural communities and an avenue for cleanup of agricultural waste.

It has been well-publicized that our country faces mounting uncertainty in meeting our energy demands. After years of getting little attention, we are now in a period where the development of domestic energy resources has reached a crucial point. I support our efforts to diversify our energy supply resources to ensure our nation's energy security, support our business and agricultural economies, and protect our individual consumers. This time of challenge also offers great opportunities. One of those is the opportunity to encourage a largely untapped resource to provide domestic energy, while also promoting the protection of the environment and rural development. I am speaking about energy derived from agricultural and animal waste sources.

Electricity from biomass and waste sources using modern technology is a renewable resource that can add to our domestic energy supply. The process uses manure and waste products that are heated and converted into biogas that is burned to generate electricity, which is sold into the power grid. This technology is widely accepted in Europe where over 600 systems are in operation today. In this country, the technology is gaining acceptance following numerous successful case studies. This process offers farmers an option for cleaning agricultural waste that is a known source of groundwater contamination and air pollution. The revenue generated from the sale of electricity provides a source of income to offset the cleanup costs, while providing important kilowatts to the power grid.

The bill I am introducing today would extend the 1.5 cent per kilowatt hour production tax credit that is currently available to wind, closed-loop biomass, and poultry waste by making it available to all agricultural and animal waste sources.

There have been other bills introduced that would extend the tax credit to additional renewable sources such as solar energy. I encourage these efforts to broaden the definition of renewable sources.

The use of modern technology to generate electricity from waste should not be overlooked. The tax credit is an important incentive to encourage its wider use. I encourage my colleagues to join me in this important initiative. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 494

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MODIFICATIONS TO CREDIT FOR ELECTRICITY PRODUCED FROM RENEWABLE RESOURCES AND EXTENSION TO WASTE ENERGY.

(a) EXPANSION OF QUALIFIED ENERGY RESOURCES.—

(1) IN GENERAL.—Section 45(c)(1) of the Internal Revenue Code of 1986 (defining qualified energy resources) is amended by striking subparagraph (C) and inserting the following:

''(C) agricultural and animal waste sources.''.

(2) DEFINITIONS.—Section 45(c) of such Code (relating to definitions) is amended by adding at the end the following new paragraph:

''(5) AGRICULTURAL AND ANIMAL WASTE SOURCES.—The term 'agricultural and animal waste sources' means all waste heat, steam, and fuels produced from the conversion of agricultural and animal wastes, including by-products, packaging, and any materials associated with the processing, feeding, selling, transporting, and disposal of agricultural and animal products or wastes (such as wood shavings, straw, rice hulls, and other bedding material for the disposition of manure).''.

(b) EXTENSION AND MODIFICATION OF PLACED-IN-SERVICE RULES.—Section 45(c)(3) of the Internal Revenue Code of 1986 (defining qualified facility) is amended by striking subparagraph (C) and inserting the following:

''(C) AGRICULTURAL AND ANIMAL WASTE FACILITY.—In the case of a facility using agricultural and animal waste to produce electricity, the term ''qualified facility'' means any facility of the taxpayer which is originally placed in service—

''(i) in the case of a facility using poultry waste, after December 31, 1999, and before January 1, 2007, and

''(ii) in the case of any other facility, after the date of the enactment of this subparagraph and before January 1, 2007.

''(D) COMBINED PRODUCTION FACILITIES INCLUDED.—For purposes of this paragraph, the term 'qualified facility' shall include a facility using agricultural and animal waste to produce electricity and other biobased products such as chemicals and fuels from renewable resources.

''(E) SPECIAL RULES.—In the case of a qualified facility described in subparagraph (C)—

''(i) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than the date of the enactment of this subparagraph, and

''(ii) subsection (b)(3) shall not apply to any such facility originally placed in service before January 1, 1997.''.

(c) CONFORMING AMENDMENTS.—

(1) The heading for section 45 of the Internal Revenue Code of 1986 is amended by inserting ''**AND WASTE ENERGY**'' after ''**RENEWABLE**''.

(2) The item relating to section 45 in the table of sections subpart D of part IV of subchapter A of chapter 1 of such Code is amended by inserting ''and waste energy'' after ''renewable''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity produced after the date of the enactment of this Act.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 68—RECOGNIZING THE BICENTENNIAL OF OHIO'S FOUNDING

Mr. VOINOVICH (for himself and Mr. DEWINE) submitted the following resolution; which was considered and agreed to:

S. RES. 68

Whereas Ohio residents will celebrate 2003 as the 200th anniversary of Ohio's founding;

Whereas Ohio was the 17th State to be admitted to the Union and was the first to be created from the Northwest Territory;

Whereas the name ''Ohio'' is derived from the Iroquois word meaning ''great river'', referring to the Ohio River which forms the southern and eastern boundaries;

Whereas Ohio was the site of battles of the American Indian Wars, French and Indian Wars, Revolutionary War, the War of 1812, and the Civil War;

Whereas in the nineteenth century, Ohio, a free State, was an important stop on the Underground Railroad as a destination for more than 100,000 individuals escaping slavery and seeking freedom;

Whereas Ohio, ''The Mother of Presidents'', has given eight United States presidents to the Nation, including William Henry Harrison, Ulysses S. Grant, Rutherford B. Hayes, James A. Garfield, Benjamin Harrison, William McKinley, William H. Taft, and Warren G. Harding;

Whereas Ohio inventors, including Thomas Edison (incandescent light bulb), Orville and Wilbur Wright (first in flight), Henry Timken (roller bearings), Charles Kettering (automobile starter), Charles Goodyear (process of vulcanizing rubber), Garrett Morgan (traffic light), and Roy Plunkett (Teflon) created the basis for modern living as we know it;

Whereas Ohio, ''The Birthplace of Aviation'', has been home to 24 astronauts, including John Glenn, Neil Armstrong, and Judith Resnick;

Whereas Ohio has a rich sports tradition and has produced many sports legends, including Annie Oakley, Jesse Owens, Cy Young, Jack Nicklaus, and Nancy Lopez;

Whereas Ohio has produced many distinguished writers, including Harriet Beecher Stowe, Paul Laurence Dunbar, Toni Morrison, and James Thurber;

Whereas the agriculture and agribusiness industry is and has long been the number one industry in Ohio, contributing $73,000,000,000 annually to Ohio's economy and employing 1 in 6 Ohioans, and that industry's tens of thousands of Ohio farmers and 14,000,000 acres of Ohio farmland feed the people of the State, the Nation, and the world;

Whereas the enduring manufacturing economy of Ohio is responsible for ¼ of Ohio's Gross State Product, provides over one million well-paying jobs to Ohioans, exports $26,000,000,000 in products to 196 countries, and provides over $1,000,000,000 in tax revenues to local schools and governments;

Whereas Ohio is home to over 140 colleges and universities which have made significant

contributions to the intellectual life of the State and Nation, and continued investment in education is Ohio's promise to future economic development in the ''knowledge economy'' of the 21st century;

Whereas, from its inception, Ohio has been a prime destination for people from all corners of the world, and the rich cultural and ethnic heritage that has been interwoven into the spirit of the people of Ohio and that enriches Ohio's communities and the quality of life of its residents is both a tribute to, and representative of, the Nation's diversity;

Whereas Ohio will begin celebrations commemorating its bicentennial on March 1, 2003, in Chillicothe, the first capital of Ohio;

Whereas the bicentennial celebrations will include Inventing Flight in Dayton (celebrating the centennial of flight), Tall Ships on Lake Erie, Tall Stacks on the Ohio River, Red, White, and Bicentennial Boom in Columbus, and the Bicentennial Wagon Train across the State: Now, therefore, be it

Resolved by the Senate, That the Senate—

(1) recognizes the Bicentennial of Ohio's founding and its residents for their important contributions to the economic, social, and cultural development of the United States; and

(2) directs the Secretary of the Senate to transmit a copy of this resolution to the Governor of Ohio.

SENATE RESOLUTION 69—DESIGNATING MARCH 3, 2003, AS ''READ ACROSS AMERICA DAY''

Ms. COLLINS (for herself, Mr. REED, and Mr. KENNEDY) submitted the following resolution; which was considered and agreed to:

S. RES. 69

Whereas reading is a basic requirement for quality education and professional success, and a source of pleasure throughout life;

Whereas Americans must be able to read if the Nation is to remain competitive in the global economy;

Whereas Congress, through the No Child Left Behind Act of 2001 (Public Law 107–110) and the new Reading First, Early Reading First, and Improving Literacy Through School Libraries programs, has placed great emphasis on reading intervention and additional resources for reading assistance; and

Whereas more than 40 national associations concerned about reading and education have joined with the National Education Association to use March 2, the anniversary of the birth of Theodor Geisel, also known as Dr. Seuss, to celebrate reading: Now, therefore, be it

Resolved, That the Senate—

(1) designates March 3, 2003, as ''Read Across America Day'';

(2) honors Theodor Geisel, also known as Dr. Seuss, for his success in encouraging children to discover the joy of reading;

(3) encourages parents to read with their children for at least 30 minutes on Read Across America Day in honor of Dr. Seuss and in a celebration of reading; and

(4) requests that the President issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

SENATE CONCURRENT RESOLUTION 10—DESIGNATING APRIL 2003 AS ''HUMAN GENOME MONTH'' AND APRIL 25 AS ''DNA DAY''

Mr. GREGG (for himself, Mr. KENNEDY, Ms. SNOWE, and Mr. DASCHLE) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 10

Whereas April 25, 2003, will mark the 50th anniversary of the description of the double-helix structure of DNA by James D. Watson and Francis H.C. Crick, considered by many to be one of the most significant scientific discoveries of the 20th Century;

Whereas, in April 2003, the International Human Genome Sequencing Consortium will place the essentially completed sequence of the human genome in public databases, and thereby complete all of the original goals of the Human Genome Project;

Whereas, in April 2003, the National Human Genome Research Institute of the National Institutes of Health in the Department of Health and Human Services will unveil a new plan for the future of genomics research;

Whereas, April 2003 marks 50 years of DNA discovery during which scientists in the United States and many other countries, fueled by curiosity and armed with ingenuity, have unraveled the mysteries of human heredity and deciphered the genetic code linking one generation to the next;

Whereas, an understanding of DNA and the human genome has already fueled remarkable scientific, medical, and economic advances; and

Whereas, an understanding of DNA and the human genome hold great promise to improve the health and well being of all Americans: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) designates April 2003 as ''Human Genome Month'' in order to recognize and celebrate the 50th anniversary of the outstanding accomplishment of describing the structure of DNA, the essential completion of the sequence of the human genome, and the development of a plan for the future of genomics;

(2) designates April 25, 2003, as ''DNA Day'' in celebration of the 50th anniversary of the publication of the description of the structure of DNA on April 25, 1953; and

(3) recommends that schools, museums, cultural organizations, and other educational institutions across the nation recognize Human Genome Month and DNA Day and carry out appropriate activities centered on human genomics, using information and materials provided through the National Human Genome Research Institute and through other entities.

SENATE CONCURRENT RESOLUTION 11—EXPRESSING THE SENSE OF CONGRESS REGARDING THE REPUBLIC OF KOREA'S CONTINUING UNLAWFUL BAILOUTS OF HYNIX SEMICONDUCTOR INC., AND CALLING ON THE REPUBLIC OF KOREA, THE SECRETARY OF COMMERCE, THE UNITED STATES TRADE REPRESENTATIVE, AND THE PRESIDENT TO TAKE ACTIONS TO END THE BAILOUTS

Mr. CRAPO (for himself and Mr. ALLEN) submitted the following concurrent resolution; which was referred to the Committee on Finance:

S. CON. RES. 11

Whereas the government of the Republic of Korea has continually, and in violation of its international trade commitments, supplied financial aid to Hynix Semiconductor Inc. (''Hynix''), a failing semiconductor company;

Whereas the United States has strongly and repeatedly requested that the Republic of Korea refrain from these wrongful trade activities;

Whereas these bailouts have resulted in severe distortion of the world DRAM, semiconductor, and electronics markets to the detriment of major United States and other non-Korean producers;

Whereas the United States has continually provided military, national security, and financial aid to the Republic of Korea, including significant contributions to the International Monetary Fund financial package to prevent the Korean economy from going into bankruptcy;

Whereas Hynix exports the vast majority of its semiconductor production to nations outside of Korea, including to the United States and European nations;

Whereas, it was recently announced that Hynix would receive an additional $4,000,000,000 in debt restructuring, eliminating Hynix's existing debt, an additional $1,550,000,000 in a debt-for-equity swap, and an extension of $2,500,000,000 with respect to other outstanding Hynix loans;

Whereas Hynix's creditor banks are providing another subsidy to Hynix in the form of $188,000,000 in financing to a Chinese company to purchase Hynix's flat computer screen business;

Whereas the largest creditors of Hynix are institutions such as the Korea Development Bank and the Woori Bank, both of which are 100 percent owned by the government of the Republic of Korea; and

Whereas United States and Europe have been forced to initiate anti-subsidy investigations against the Republic of Korea: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That—

(1) it is the sense of Congress that the actions of the Republic of Korea with respect to the bailouts of Hynix Semiconductor Inc. (''Hynix'') are severely detrimental to the bilateral friendship and economic relationships between the United States and Korea; and

(2) Congress calls on—

(A) the Republic of Korea to—

(i) immediately cease any further bailouts of Hynix; and

(ii) immediately comply with all of its obligations as a member of the World Trade Organization, including its obligations regarding subsidies;

(B) the Secretary of Commerce and the United States Trade Representative to—

(i) immediately take such actions as are necessary to end any further bailouts of Hynix, including the self-initiation of further trade cases, the initiation of a further government investigation of the financial impact of these bailouts, and the calling of a special subsidies code meeting to raise the legal concerns with this issue; and

(ii) begin consultations with Congress regarding appropriate legislative action to fully deal with the impact of the bailouts of Hynix; and

(C) the President to consult with the European Union regarding joint action with respect to the unlawful subsidies to Hynix that are harming the international DRAM, semiconductor, and electronics markets.

Mr. CRAPO. Mr. President, I rise today to introduce this resolution on behalf of myself and Senator GEORGE ALLEN from Virginia. This resolution underscores a very serious and ongoing problem relating to the illegal subsidies being provided by the Korean Government to Hynix Semiconductor, one of the companies operating in South Korea. With this resolution, my

colleagues and I urge Secretary Evans, our Secretary of the Department of Commerce, and Ambassador Zoellick, U.S. Trade Representative, to use all means at their disposal to combat these illegal subsidies in the strongest ways possible under our trade laws.

Since October 2000, the Government of Korea, acting through the banks that it owns and controls, has provided an astounding $16 billion in subsidies to Hynix, a Korean producer of DRAM semiconductors. Hynix is a company with massive debt resulting from the easy lending practices of the Korean banks during the late 1990s. With these preferential loans, Hynix built substantial new capacity and became the third largest DRAM producer in the world.

Starting in late 2000, Hynix's overdevelopment began to catch up with them and Hynix became unable to repay the principal and interest on these massive loans and bonds. Rather than letting Hynix undergo formal bankruptcy and deal with the financial situation it faced, the Korean Government orchestrated no less than five separate bailouts of Hynix. Had it not done so, Hynix would have had to face a restructuring with substantial asset sales, and would have been simply another competitor in the marketplace in a more balanced and fair playing field.

However, these subsidies have permitted Hynix to stay in business with its unrealistic business practices. Hynix, a company that cannot compete in the market on a balanced playing field, in a fair market environment, continues to run its inefficient DRAM plants at full speed, flooding world markets with subsidized products. Despite the subsidies, Hynix continues to lose money—$8 billion over the last 3 years. Yet the Korean Government continues to pour money into this company.

Just 2 months ago there was yet another bailout, amounting to $4.1 billion. This is almost twice Hynix's revenues in all of the year 2002, which amounted to $2.4 billion.

The Korean Government must not be allowed to continue to underwrite the horrendous operating losses of this company as it has done for the past 3 years. It is time for the Korean Government to stop its illegal subsidies. In the highly competitive DRAM market, subsidies of this sort completely distort production and trade.

Every other DRAM company in the world is being crippled by the subsidized DRAM products that Hynix floods the markets with. This has resulted in the worst and longest downturn in the DRAM sector that has ever been experienced by this sector. Nobody can make money in this business if one of the biggest players is being underwritten by the South Korean government treasury. Subsidies of Hynix have had a huge impact on Micron Technology, the last remaining U.S.-based producer of DRAMs. Just last week, Micron announced it was laying off 10 percent of its worldwide workforce. This translates into 1,100 lost jobs in Idaho alone, and 560 lost jobs in the State of Virginia, which is why my colleague, Senator ALLEN, is joining in this resolution.

This is the first time Micron has had to have layoffs since 1985, and it was only done by the company as a last resort. Hynix subsidies have had a real impact on Micron's bottom line as well. The subsidies have impacted pricing to such an extent that even Micron, one of the most efficient DRAM producers in the world, has lost $2 billion over the past 2 years. We cannot afford to see an important technology like DRAMs lost in the United States because of illegal, predatory foreign government subsidies.

The South Korean government is clearly responsible for the bailouts that have occurred. The creditor bank now owns 67 percent of Hynix, and the government owns the vast majority of the creditor bank. To argue that the government plays no role in this bailout is the height of absurdity.

The Secretary of Commerce and the United States Trade Representative have the power to remedy this situation and put a stop to more bailouts. We need to use the trade laws we have to the fullest extent possible and countervailing duty should be imposed that offsets the full amount of these subsidies. These sorts of subsidies have absolutely no place in today's global economy, particularly as we are engaged in a round of new trade talks aimed at further liberalizing trade regimes around the world. The injurious and anachronistic policies of the government of South Korea must stop.

In this context, already the European Union and the United States Government are engaged in investigations under our trade laws of the predator conduct of the South Korean government in DRAM markets. We expect decisions on these cases sometime in the next couple of months, and hopefully these cases will establish the necessary groundwork for us to be able to deal as we should in the global community with this kind of unacceptable government subsidy.

The U.S. International Trade Commission has already issued its ruling that Micron Technology has been injured by these illegal activities of the South Korean government. We must now move on to determine the extent of these activities and assure that countervailing duties are identified and applied to the DRAMs that Hynix continues to flood the world markets with.

I want to read a part of the resolution to establish what it is we are asking our Congress to do.

After the whereas clauses, it states:

Resolved by the Senate and House of Representatives concurring, That, No. 1, it is the sense of the Congress that the actions of the Republic of Korea with respect to the bailouts of Hynix Semiconductor, Inc. are severely detrimental to the bilateral friendship and economic relationships between the United States and Korea; and, No. 2, Congress calls on the Republic of Korea to immediately cease any further bailouts of Hynix and to immediately comply with all of its obligations as a member of the World Trade Organization, including its obligations regarding subsidies. The Secretary of Commerce and the U.S. Trade Representative are called on to immediately take such actions as are necessary to end any further bailouts of Hynix, including the self-initiation of further trade cases, the initiation of a further government investigation of the financial impact of these bailouts, and the calling of a special subsidies code meeting to raise legal concerns with this issue and to begin consultations with Congress regarding appropriate legislative action to fully deal with the impact of bailout of Hynix; and, the President is called on to consult with the European Union regarding joint action with respect to the unlawful subsidies to Hynix that are harming the international DRAM semiconductor and electronics markets.

As I have indicated, we face incredibly difficult times in the DRAM and semiconductor industry as a result of one nation's desire to continually prop up its competitors against all other world competitors—a competitor that has shown it cannot effectively compete without continuous government subsidies.

This is one of the core reasons why we are engaged worldwide in negotiations to reduce government subsidies to inefficient competitors, to stop nations from trying to flood the market with their company's products so that they can drive other, more efficient and more effective competitors out of the market and take those markets from other countries where they properly reside.

I encourage all of my colleagues to strongly support this resolution and send a strong message to the government of South Korea that the bailouts of Hynix must stop.

Mr. CRAPO. Mr. President, I was present as the debate took place with regard to the editorial issues that have been raised relating to the Miguel Estrada nomination. The Senator from Nevada raised this issue. In the debate over the Estrada nomination, there are many issues that flow back and forth. One of them is the question of what the public believes, and what the editorial boards across this Nation believe.

The editorial from the New York Times was discussed earlier. I point out that this editorial in the New York Times was one of only a few editorials in the country that supports the position that the Senate should continue with a filibuster of this nomination. In fact, only eight of the editorial boards across this Nation have taken the position of supporting the filibuster of Miguel Estrada's nomination, while fully 51 editorial boards across the Nation support ending the obstruction of this nomination and conclusion of the filibuster and resulting in an up-or-down vote in the Senate on the Estrada nomination, including the Los Angeles Review Journal which on two separate occasions supported Mr. Estrada.

Thank you, Mr. President. I yield the floor.

SENATE CONCURRENT RESOLUTION 12—HONORING THE LIFE AND WORK OF MR. FRED MCFEELY ROGERS

Mr. SANTORUM (for himself and Mr. SPECTER) submitted the following concurrent resolution; which was ordered held at the desk:

S. CON. RES. 12

Whereas Mr. Rogers was born in Latrobe, Pennsylvania, in 1928;

Whereas Mr. Rogers earned a degree in music composition, studied child development at the University of Pittsburgh, attended Pittsburgh Theological Seminary, and was ordained a Presbyterian minister;

Whereas Mr. Rogers created *Mr. Rogers' Neighborhood* and hosted the program through the Public Broadcasting Service (PBS) from 1968 through 2000;

Whereas *Mr. Rogers' Neighborhood* is the longest-running program on PBS;

Whereas *Mister Rogers' Neighborhood* was created and filmed in Mr. Rogers home town of Pittsburgh and Mr. Rogers caring spirit personifies the views he learned in western Pennsylvania;

Whereas *Mr. Rogers' Neighborhood* continues to be an educational program for children emphasizing the value of every individual, and teaching children how they fit into their families, communities, and country;

Whereas *Mr. Rogers' Neighborhood* won four Emmy Awards, plus one for lifetime achievement; and

Whereas Mr. Rogers was awarded a George Foster Peabody Award in 1993: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress recognizes and honors Mr. Fred McFeely Rogers for—

(1) dedicating his career to the educational children's program *Mr. Rogers' Neighborhood*;

(2) the accomplishments of this influential program and the emphasis it places on the value of each individual within his or her community; and

(3) the compassionate, moral example he set for millions of American children for over 30 years.

SEC. 2. TRANSMISSION OF ENROLLED RESOLUTION.

The Secretary of the Senate shall transmit an enrolled copy of this concurrent resolution to Mrs. Joanne Rogers.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, February 27, 2003, at 9:30 a.m., in open session to consider the nominations of the Honorable Stephen A. Cambone to be Under Secretary of Defense for Intelligence; Mr. John Paul Woodley, Jr., to be Assistant Secretary of the Army for Civil Works; and Ambassador Linton F. Brooks to be Under Secretary for Nuclear Security and Administrator for Nuclear Security, National Nuclear Security Administration, Department of Energy.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, February 27 at 10:00 a.m. to receive testimony regarding energy production on Federal Lands.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Thursday, February 27, 2003, at 10:00 a.m., to hear testimony on Examining the Administration's Fiscal Year 2004 Health Care Priorities.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE FOR FOREIGN RELATIONS

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 27, 2003 at 9:30 a.m. to hold a Hearing on American Public Diplomacy and Islam.

AGENDA

Witnesses

Panel 1: The Honorable Charlotte Beers, Undersecretary of State for Public Diplomacy, Department of State, Washington, DC and the Honorable Kenneth Y. Tomlinson, Chairman, Board of Broadcasting Governors, Washington, DC;

Panel 2: Andrew Kohut, Director, The Pew Research Center for the People & the Press, Washington, DC; the Honorable Kenton Keith, Senior Vice President, Meridian International Center, Washington, DC; and Dr. R. S. Zaharna, School of Communication, American University, Washington, DC.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. ALLARD. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Thursday, February 27, 2003 at 11 a.m. for a hearing to consider the nomination of Janet Hale to be Under Secretary for Management, Department of Homeland Security; the Honorable Clark Kent Ervin to be Inspector General, Department of Homeland Security; and Linda M. Springer to be Controller, Office of Federal Financial Management, Office of Management and Budget.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. ALLARD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, February 27, 2003, at 2:30 p.m., to hold a closed hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SPECIAL COMMITTEE ON AGING

Mr. ALLARD. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet Thursday, February 27, 2003, from 10 a.m.–12 p.m. in Dirksen 628 for the purpose of conducting a hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. ALLARD. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, February 27, at 3 p.m., to receive testimony regarding S. 246, a bill to provide that certain Bureau of Land Management land shall be held in trust for the Pueblo of Santa Clara and the Pueblo of San Ildefonso in the State of New Mexico; S. 32, a bill to establish institutes to conduct research on the prevention of, and restoration from, wildfires in forest and woodland ecosystems of the interior west; S. 203, a bill to open certain withdrawn land in Big Horn County, Wyoming, to locatable mineral development for bentonite mining; S. 278, a bill to make certain adjustments to the boundaries of the Mount Naomi Wilderness Area, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY AND SPACE

Mr. ALLARD. Mr. President, I ask unanimous consent that the Subcommittee on Science, Technology and Space be authorized to meet on Thursday, February 27, 2003, at 2:30 p.m. on U.S. involvement in aerospace research.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. ALLARD. Mr. President, I ask unanimous consent that the Subcommittee on Transportation and Infrastructure be authorized to meet on Thursday, February 27, 2003, at 9:30 a.m., to conduct a hearing on the Federal Highway Administration's FY 2004 budget.

This meeting will be held in SD 406.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. SANTORUM. Mr. President, I ask unanimous consent that at 5:30 on Monday, March 3, the Senate proceed to a vote on the nomination of Marian Horn to be a judge of the U.S. Court of Federal Claims; provided further that following that vote, the President be immediately notified of the Senate's action.

Mr. REID. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE BUDGET

Mr. PRYOR. Mr. President, I rise today to discuss an issue that is important to many people throughout the State of Arkansas and indeed throughout this country. I rise to express my disappointment with the budget as it pertains to law enforcement programs and, in particular, community policing.

I believe the budget shortchanges smaller communities and grossly underfunds programs that have put more police officers on the street, reduced crime in rural areas, curbed drug abuse, and put at-risk youth back on the right track.

Mr. President, this budget cuts funding to the Community Oriented Policing Services—known by its acronym COPS—by 85 percent. That is 85 percent. This program was funded at $1.1 billion in fiscal year 2002. President Bush proposes only $164 million for the COPS program in fiscal year 2004. The administration's budget request for COPS represents a 100 percent cut to the COPS universal hiring program, and a 100 percent cut to the ''COPS in school'' program. In fact, the only program that is funded under this budget is the COPS technology program, and even that has been cut by 66 percent.

From its inception, COPS has awarded just over $8 billion to local and State law enforcement agencies across the country. With grant money, departments have hired over 110,000 community police officers, in addition to purchasing technological upgrades and equipment.

The COPS Program was established to focus on crime prevention and community engagement. This breaks with traditional notions of law enforcement by moving from reactive responses to proactive problem solving, focusing on the causes of crime and disorder. Community-oriented policing requires much more interaction on the neighborhood and community level than previous policing efforts.

In Arkansas, we have been able to hire over 1,300 additional officers with the $83 million we have received. We have also used that money to combat methamphetamine use and to implement the COPS Program in schools.

A February 3 article in the Arkansas Democrat-Gazette, my State's largest newspaper, stated the reason given by this administration for cutting funding is that COPS has ''not produced conclusive results in lowering crime.''

I speak today not only as a Senator, but also as the former chief law enforcement officer of Arkansas, and I wholeheartedly disagree with this administration's assessment of these very important programs.

I have worked closely with law enforcement officers of my State to make Arkansas a safer place and a better place to raise a family. They are strong leaders in their communities and demonstrate the character and the courage that define us as a nation. Together, we are able to keep over 1,000 criminals off the street due to their work on the front lines.

Oftentimes, these police officers work in smaller rural communities. They operate under tighter budgets with smaller staffs than most of their urban counterparts. Nonetheless, they put their lives on the line every single day. They make real differences in people's lives, and they do it with professionalism and an attitude of public service. They do it because it is the right thing to do. They do not do it because it is easy or because it is pleasant, and, Lord knows, they do not do it for the money. They are not asking for much in return.

I wish to take this time to thank all law enforcement officials for the work they do. I especially thank Sheriff Marty Montgomery of Faulkner County, Sheriff Ron Ball of Hot Spring County, and Sheriff Chuck Lange of the Arkansas Sheriffs' Association. They are in Washington today as part of their national association's meeting. I thank them not only for their commitment to public service and to keeping our communities safer—combined they have 87 years of law enforcement experience—but I also thank them for sharing with me their insights into the COPS Program and helping to demonstrate just how important the program is to them and other local law enforcement.

You see, Mr. President, to them, this funding could mean the difference between life and death. This past Saturday at 7:30 p.m., Faulkner County sheriff's deputy, Brad Brocker, was called to investigate a suspicious person call in a high drug-use area. When Deputy Brocker arrived on the scene, he was met with three bullets to the heart in the upper chest. Luckily, he was wearing his bulletproof vest, but he risked his life to make his community and, yes, even his Nation, safer and better. But there is more to the story.

The Kevlar vest he was wearing was paid for by Federal grant money, and Deputy Brocker was originally hired as a deputy under the COPS Program. Putting this Federal money back into our communities works. In fact, Faulkner County, with its 90,000 citizens and spanning 700 square miles, has used COPS funding to hire 12 officers in the past few years. Twelve may not sound like a lot, but it constitutes half of the Faulkner County sheriff's police force. It has made a difference.

In the last 7 years, the arrest rates for burglary, robbery, and methamphetamine production have all gone up. Any one of my colleagues who lives in a rural State can surely tell you about their problems with the use and the production of methamphetamine. It has become an epidemic throughout rural America.

Last year alone, the Faulkner County Sheriff's Office seized 44 labs and shut them down for good. Sheriff Montgomery is proud of that accomplishment, as he should be, but he warns that by cutting law enforcement programs, such as COPS, the steps they have taken forward will be lost, and they cannot sustain the manpower and law enforcement presence in their county.

I believe we have a duty to support legislation, programs, and budgets to address the challenges facing law enforcement agencies in rural areas in Arkansas and all across the country, in communities such as Malvern, a small city in southwest Arkansas. Richard Taft is the police chief of the Malvern Police Department. Mr. Taft has 32 years of experience in law enforcement and 10 years as Malvern's police chief. When Chief Taft took over in 1993, the Malvern police force consisted of 14 people responsible for protecting a city of over 10,000 citizens. As Chief Taft put it to me one day: I didn't have enough officers to protect my officers, much less the citizens of Malvern.

In 1993, according to Chief Taft, crime was rampant. Robberies, drive-by shootings, and burglaries occurred on a weekly basis. Since instituting the COPS Program and utilizing its grant funding, crime is down. The Malvern police force today is 22 people strong. With the additional manpower, Malvern has assembled a special crime team with the ability to respond to critical incidents, including chemical spills and missing persons. They did not have that ability before. COPS funding has allowed the Malvern Police Department to free up some of their money for other necessities, such as computers and radios.

Chief Taft says:

Without the COPS Program, I wouldn't have a police force.

Yet this administration says there is no conclusive evidence that the COPS Program works? I disagree with that. More importantly, there are scores of law enforcement officials who would also stand up to dispute that claim.

In 1993, Little Rock, AR, had the highest violent crime rate per capita in the country. By working with the Federal Government, using the COPS Program, and their own additional hires, the Little Rock Police Department bolstered their force and violent crime has dropped by 60 percent.

Chuck Lange, the head of the Arkansas Sheriffs' Association, knows the significant impact the COPS Program has had statewide—and I am sure sheriffs in other States can tell you the same thing—by putting more police officers on the street. He knows that more officers have helped shorten response time. That is especially important in sprawling rural communities. He knows that time is not a luxury afforded to crime victims. I know it as

well. It may be because my grandfather, my great-grandfather, and my great-great-grandfather were all sheriffs of Ouachita County.

Hot Spring Sheriff Ron Ball told me that in his county the COPS Program has enabled him to direct more time and resources to curbing domestic violence.

He knows that if his department doesn't do a better job of protecting the abused, they have nowhere else to turn.

And these law enforcement officers all know and have all told me that if we let these drastic COPS funding cuts stand, rural America will suffer.

The list of law enforcement officials opposed to these cuts is long, but the opposition is not only limited to law enforcement. There are many mayors, community activists, and school administrators who also realize the importance of this program; school administrators like Dr. Benny Gooden.

Dr. Gooden is the superintendent of schools in Fort Smith, AR. He oversees 26 schools with 12,500 students. Dr. Gooden knows how successful the COPS in Schools program has been. He knows that COPS is an asset to this community and to his schools. The presence of friendly, approachable police officers, known as School Resource Officers, on their campuses and in their neighborhoods has had a calming effect on Fort Smith schools.

Since the implementation of the COPS program in Fort Smith schools, Dr. Gooden has witnessed a decline in violent incidents. Over the past few years suspensions have decreased by 65 percent. Expulsions have been reduced by 80 percent. The drop-out rate has been cut in half.

When talking about the positive effect of the COPS in Schools program, Dr. Gooden calls it a powerful relationship; a win-win for both the schools and the community. Because the police officers are in the community and in the schools and are connected to the students and their families, officers can better identify and proactively defuse any potential problems there may be.

Often times problems that are found in schools begin in the neighborhood and in the home. Police officers in Fort Smith recognize this and are in a better position to resolve such problems.

Dr. Gooden has also witnessed, firsthand, the affirmative impact of this program on a child's educational experience. The officers interact with students. Some officers have offices in the schools. They are invited to school activities. These officers do not just show up when there is trouble, they are positive role models for Fort Smith's children and are involved in their lives. They spend time with students and in the community when there is no trouble and that presence, can make all the difference.

These positive results are not limited to Fort Smith nor are they only appreciated by the administrators. As Arkansas Attorney General, I spent a lot of time in schools talking to our young people, and move importantly listening. Over and over the students told me how much they liked having School Resource Officers on campus. It made them feel safer, it provided a needed role model and it oftentimes provided an adult they could talk to. It showed our children that their community cared about them and gave them a much better perspective on law enforcement.

We must also not forget the importance of these police officers as an integral part of our homeland defense and as first responders in the case of terrorist attacks. September 11 changed a lot of things for our country. It woke us to the need of genuine partnerships that involve all segments of our communities, and all levels of government. We all have a role in keeping our community safe, and overall when we talk about homeland security, we need to give serious thought to our law enforcement needs.

Unfortunately, we saw how September 11 strained the resources, and the budgets, of many towns and cities. The administration's law enforcement budget does not help that problem. Our civilian authorities must be able to respond to whatever may confront them in the future, but how can they properly respond, when they are given a budget that cuts deep into their existence? The irony is that I have heard Secretary Ridge speak many times about how important local law enforcement agencies are to homeland security, but at the very moment when our Nation needs them most, we are drastically cutting assistance to them.

The Federal Government must ensure that local governments are given the resources to complete their task and that we share the responsibilities for homeland security wisely and fairly. I know that Democrats and Republicans alike agree with this. I know Secretary Ridge agrees with this. I know that President Bush agrees with this.

President Bush said on February 20 regarding the 2003 omnibus appropriations that he was concerned that the Congress had failed to provide over $1 billion in funds for State and local law enforcement and emergency personnel. He went on to lament that the shortfall for homeland security first responder programs was more than $2.2 billion.

For the record, I share President Bush's concern, but shortchanging our local law enforcement efforts by under funding the critical, popular and effective COPS program is not the answer. I take a line from Chief Taft of the Malvern Police Department put it best when he said: ''Doing away with the COPS Program, when we are so concerned with homeland security is the wrong thing to do.'' I could not agree more.

Much is made of the word ''hero.'' Before September 11, to pick up a magazine or to put on the television, hero was synonymous with professional athletes, movie stars, or musicians. But September 11 reminded us that real heroes are right in our own backyard. While everyone was rushing out of the World Trade Center, EMT, firefighters and police officers were rushing in. That is the definition of ''hero.''

Local law enforcement officers protect our communities, our homes and our families from the threat of violent crime. Simply put, they stand up for justice. I believe we must do more to stand up for them. They need funding to do their jobs properly and deliver the same quality service that our citizens expect and deserve, whether they live in New York City, or Des Arc, AR.

During the upcoming budget debate, I will support increasing funding for the COPS program and other law enforcement programs. I would urge my colleagues to do the same. I also plan to be a proud co-sponsor of Senator JOE BIDEN's legislation to reauthorize the COPS program.

We need to build on what we know works and develop initiatives that respond to the law enforcement needs of our communities. The COPS program works and deserves adequate funding. These communities who benefit from this program deserve it as well.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I rise to congratulate the Senator from Arkansas on what I believe is his first speech on the floor of the Senate since his election. It is a privilege to serve with him, the Senator from South Carolina, and the Senator from New Hampshire in the new class of Senators in the 108th Congress.

It is appropriate that the Senator would choose for his subject law enforcement because of his distinguished career as the chief law enforcement officer of Arkansas and having had members of the law enforcement community in his family for many years. He comes to the floor with a record of distinguished service from a distinguished family whose father is a close friend of many who have served in the Senate with distinction for many years.

My colleagues and I congratulate him on his first speech. We look forward to many years of service with him.

Mr. PRYOR. Mr. President, I thank the distinguished Senator from Tennessee for his kind words and express to him once again, as I have done privately and personally, I look forward to working with him on the issues that are so important to him, whether they be education or whatever they may be. It is an honor to serve with him.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH. Mr. President, I rise today to speak about the need for hate

crimes legislation. In the last Congress Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred July 6, 2001 in Grand Junction, CO. Eric Valdez, 19, was stabbed to death by Sjon Elmgreen, 19, after leaving a grocery store. The incident began when Elmgreen's fiancee called him to say that two Hispanic teens had just been flirting with her at the grocery store. She later told police that the teens had not been rude or threatening in the store. Nonetheless, Elmgreen and his roommate walked from their home to confront the teens. Elmgreen's fiancee told police that the confrontation turned into a fist fight, during which Elmgreen yelled racial epithets. After the fight, Elmgreen stabbed Valdez.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

DISCHARGE OF GAY LINGUISTS FROM THE MILITARY

Mr. FEINGOLD. Mr. President, I wish to speak on the military's recent discharge of several linguists who are critically needed in our Nation's fight against terrorism but who, in the military's eyes, are unfit for the job because of their sexual orientation. The military's treatment of these individuals is not only a grave injustice to these talented men and women who have bravely volunteered to defend our Nation, but it poses a serious threat to our Nation's preparedness.

After the terrorist attacks of September 11, 2001, our Nation's security agencies and all branches of the military recognized that they must increase the recruitment and training of linguists who can speak and interpret languages such as Arabic, Farsi, Korean, Mandarin Chinese, and Russian. Understanding these languages is critical to ensuring our Nation's security. Those who are able to communicate in these languages can translate communications that may be made by terrorists or others intent on doing us harm. In fact, a large portion of the intelligence information retrieved by the U.S. security agencies currently cannot be translated, hindering the ability of the Federal Government to protect our country.

According to a study released by the U.S. General Accounting Office in January 2002, the Army is facing a serious shortfall of linguists in five of the six languages it categorizes as most critical—Arabic, Korean, Mandarin Chinese, Farsi, and Russian. The Army has met only 50 percent of its need for linguists who speak Arabic, 63 percent of its need for Korean speakers, 62 percent of its need for Mandarin Chinese speakers, 32 percent of its need for Farsi speakers, and 63 percent of its need for Russian speakers. This leads to a 44 percent total shortfall in translators and interpreters for 5 of the 6 critical languages. Furthermore, the Army only has 75 percent of the cryptology linguists needed who speak Korean and Mandarin Chinese, and has a 13 percent shortfall of Army Human Intelligence Collectors in five of the languages found to be of critical importance. Spanish is the only language for which the Army has met its linguist needs.

Although the military faces a crisis in the linguistics field, linguists with a high level of proficiency in languages determined critical by the military and security agencies have continued to be discharged from the Armed Forces simply because they are gay, lesbian, or bisexual.

In 1993, the military instituted a plan known as ''Don't Ask, Don't Tell, Don't Pursue, Don't Harass,'' known more commonly as the ''Don't Ask, Don't Tell'' policy. The basic premise of the ''Don't Ask, Don't Tell'' policy is that, while military leaders know that gays, lesbians, and bisexuals have always played an important part in America's military, homosexual members of the military are not allowed to be asked about or to tell anyone about their sexual orientation. Furthermore, the Department of Defense generally cannot conduct investigations regarding the sexual orientation of service members, and the Armed Forces has a policy that does not tolerate harassment of anyone based on perceived or actual homosexuality.

The ''Don't Ask, Don't Tell'' policy has been, by most accounts, a failure. Homosexual military personnel continue to be harassed within all the branches of the Armed Forces. In fact, according to the Servicemembers Legal Defense Network, SDLN, an advocacy organization dedicated to aiding gay, lesbian, and bisexual service members who face discrimination in the armed services, in 2001 the armed services fired more than 1,250 gay, lesbian, and bisexual Americans B more than any other year since 1987. Furthermore, since the initiation of the ''Don't Ask, Don't Tell'' policy, more than 7,800 American service members have lost their jobs because of anti-gay sentiment.

Not only does the ''Don't Ask Don't Tell'' policy needlessly discriminate against courageous Americans, it also wastes millions in taxpayer dollars. For example, according to SLDN, the government spent $36 million to replace gays, lesbians, and bisexuals who were discharged from the military in 2001. Even more staggering is the fact that the government has spent over $234 million to train replacements for homosexual service members since the ''Don't Ask, Don't Tell'' policy was enacted in 1993. Thus, instead of using those millions of dollars on fighting terrorism, the military is spending it to replace linguists that they already have in their ranks.

Not only does the ''Don't Ask, Don't Tell'' policy waste time, money and linguistic skill, it also initiates discrimination against those who simply want to serve their country. One of these Americans is Alastair Gamble. He had been in training in Arabic for only a few months at the Defense Language Institute when the terrorist attacks of September 11 occurred. After the attacks, he decided that his skills were needed more than ever. He continued his studies and soon was able to converse about military operations, economics, and politics in Arabic. He, however, would not be able to serve his country. Why? Because he was caught one night in his partner's room after hours. Though Gamble admits that he broke the military's policy, he states that many heterosexual couples also broke this same rule on that same night. The heterosexual couples, however, were only reprimanded. In stark contrast, Gamble's infraction led to a search of his room where military officials found evidence that led to the discovery of a relationship with another officer who was studying Korean at the time. Soon both Gamble and his partner were dismissed from the Army, and the American people were denied the service of two young men who were learning badly needed language skills.

Gamble and his partner are not alone. From October 2001 through December 2002, seven other linguists specializing in critical languages were also discharged after telling superiors that they were gay.

Gamble and the eight other linguists should not be treated this way. It is past time for the U.S. military to modernize its attitudes toward soldiers' sexual orientation. It is time for the U.S. military to recognize the contributions of gay, lesbian, and bisexual military officers and enlisted personnel by allowing them to serve in the Armed Forces without fear and prejudice. Currently, security organizations within the United States allow for open service—most notably, the Central Intelligence Agency and the National Security Agency. These openly gay men and women serve our country well. In fact, they sometimes serve along-side military men and women who cannot discuss their sexual orientation.

Not only do United States intelligence agencies allow for open service, but many other nations allow open service as well. Some of our closest allies—Germany, France, the United Kingdom, Australia, the Czech Republic, Sweden, Canada, Belgium, the Netherlands, Spain, Denmark, Norway, Luxembourg, Iceland and Italy—allow open service in their military. In fact, the United States and Turkey are the only two NATO countries that do not allow open military service for gay men.

Nations that allow for open military service have not reported any change in the way the military is run because of their policies. According to a study by Aaron Belkin, the Director of the Center for the Study of Sexual Minorities at the University of California, Santa Barbara, and Jason McNichol, senior officials, commanders, and military scholars within the Australian Defense Forces consistently praise the lifting of the gay ban, which occurred in 1992. The report states that there has been no overall pattern of disruption to the military, recruitment and retention have not suffered, and military performance was not affected because of the ban.

In January 2000, Britain too lifted its ban on gays in the military. According to PlanetOut News, a review of the policy by the British military, released in late 2000, found that there was no discernable impact on the military after it lifted the ban.

If some of our closest allies have been successful in allowing open service in the military, why not the United States?

Our military has been fighting terrorism and may soon go to war against Iraq. We desperately need the specialized language skills of our fellow Americans as resources. Our military should cease the discriminatory and counter-productive policy of discharging competent military personnel simply because of their sexual orientation. I hope that this administration will consider the consequences of the decision to discharge the linguists I have spoken about today and will give gay, lesbian, and bisexual Americans the chance to serve openly in the United States military.

Mr. WARNER. Mr. President, I rise today to contribute to the public discourse and national debate we are witnessing with regard to a potential conflict—if diplomacy fails—with Saddam Hussein's brutal regime in Iraq. All of our offices have been inundated with calls, e-mails, and letters from concerned constituents about the consequences of war with Iraq. It is a timely debate of utmost gravity and importance. It is the essence of our democracy.

I, for one, have been supportive of our President's policies and intentions with regard to Iraq. I am firmly convinced that—should our efforts at the United Nations fail to convince Saddam Hussein to disarm—we must decisively end the menace that he represents to the world and to his own people. He has tyrannized his nation, the region and, indeed, the entire world for over two decades. I am proud that our President has shown the courage to bring this present and growing danger to the world's attention. It is not easy to muster the courage, in the face of widespread apprehension, to confront the truly evil elements of our global community. It is easier and more popular to procrastinate and defer decisions.

Our President is a man of principle however, who will not shrink from the dangers that threaten our Nation. He has carefully laid out a case against Saddam Hussein and has brought to the attention of the world the terrible threat this man and his regime represent to our national and global security. I am proud to stand with him and with my colleagues who have given the President the authority he needs to effectively confront Saddam Hussein, with military force, if necessary.

This morning's Washington Post contained a thoughtful editorial on this important subject: ''Drumbeat on Iraq? A Response to Readers.'' It is an editorial that captures, in a balanced manner, the essence of the debate and is, in fact, responsive to the diverse readership of the Post.

I commend this editorial to my colleagues and my constituents. I further thank the Washington Post for this thoughtful contribution to the national debate on this subject. The prospect of conflict is never a pleasant option. The consequences of inaction in this case are unacceptable. Our President has enhanced the security and safety of our Nation by forcefully confronting those who would bring harm to our shores. We can no longer stand idly by. In the case of Saddam Hussein, I fully agree with the conclusion of this Washington Post editorial that, ''. . . a long term peace will be better served by strength than by concessions.'' We must find the strength, as a nation—hopefully as an international community—to act if this last chance for diplomacy fails.

I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Feb. 27, 2003]

''DRUMBEAT'' ON IRAQ? A RESPONSE TO READERS

''I have been a faithful reader of the Washington Post for almost 10 years,'' a recent e-mail to this page begins, ''Recently, however, I have grown tired of your bias and endless drumbeating for war in Iraq.'' He's not the only one. The national and international debate over Saddam Hussein's weapons of mass destruction, and our editorials in favor of disarming the dictator, have prompted a torrent of letters, many approving and many critical. They are for the most part thoughtful and serious; the antiwar letters in particular are often angry and anguished as well. ''It is truly depressing to witness the depths Washington Post editors have reached in their jingoistic rush to war,'' another reader writes. It's a serious charge, and it deserves a serious response.

That answer, given the reference to ''Washington Post editors,'' probably needs to begin with a restatement of the separation at The Post news and editorial opinion functions. Those of us who write editorials have no influence over editors and reporters who cover the news and who are committed to offering the wariest and most complete journalism possible about the standoff with Iraq. They in turn have no influence over us.

For our part, we might begin with that phrase ''rush to war.'' In fact there is nothing sudden or precipitous about our view that Saddam Hussein poses a grave danger. In 1990 and 1991 we supported many months of diplomacy and pressure to persuade the Iraqi dictator to withdraw his troops from Kuwait, the neighboring country he had invaded. When he failed to do so, we supported the use of force to restore Kuwait's independence. While many of the same Democrats who oppose force now opposed it then also, we believe war was the correct option—though it was certainly not, at the time, the only choice. When the war ended, we supported—in hindsight too unquestiongly—a cease-fire agreement that left Saddam Hussein in power. But it was an agreement, imposed by the U.N. Security Council, that demanded that he give up his dangerous weapons.

In 1997 and 1998, we strongly backed President Clinton when he vowed that Iraq must finally honor its commitments to the United Nations to give up its nuclear, biological and chemical weapons—and we strongly criticized him when he retreated from those vows. Mr. Clinton understood the stakes. Iraq, he said, was a ''rogue state with weapons of mass destruction, ready to use them or provide them to terrorists, drug traffickers or organized criminals who travel the world among us unnoticed.''

When we cite Mr. Clinton's perceptive but ultimately empty comments, it is in part to chide him and other Democrats who take a different view now that a Republic is in charge. But it has a more serious purpose too. Mr. Clinton could not muster the will, or the domestic or international support, to force Saddam Hussein to live up to the promises he had made in 1991, though even then the danger was well understood. Republicans who now line up behind President Bush were in many cases particularly irresponsible; when Mr. Clinton did bomb Iraqi weapons sites in 1998, some GOP leaders accused him of seeking only to distract the nation from his impeachment worries. Through the end of Mr. Clinton's tenure and the first year of Mr. Bush's presidency, Saddam Hussein built up his power, beat back sanctions and found new space to rearm—all with the support of France and Russia and the acquiescence of the United States.

After Sept. 11, 2001, many people of both parties said—and we certainly hoped—that the country had moved beyond such failures of will and politicization of deadly foreign threats. An outlaw dictator, in open definance of U.N. resolutions, unquestionably possessing and pursuing biological and chemical weapons, expressing support for the Sept. 11 attacks: Surely the nation would no longer dither in the face of such a menace. Now it seems again an open question. To us, risks that were clear before seem even clearer now.

But what of our ''jingoism,'' our ''drumbeating''? Probably no editorial page sin could be more grievous than whipping up war fever for some political or trivial purpose. And we do not take lightly the risks of war—to American and Iraqi soldiers and civilians first of all. We believe that the Bush administration has only begun to prepare the public for the sacrifices that the nation and many young Americans might bear during and after a war. And there is a long list of terrible things that could go wrong: anthrax dispersed, moderate regimes imperiled, Islamist recruiting spurred, oil wells set afire.

The right question though, is not ''Is war risky?'' but ''Is inaction less so?'' No one can provide more than a judgment in reply. But the world is already a dangerous place. Anthrax has been wielded in Florida, New York and Washington. Terrorists have struck repeatedly and with increasing strength over the past decade. Are the United States and

its allies ultimately safer if they back down again and leave Saddam Hussein secure? Or does safety lie in making clear that his kind of outlaw behavior will not be tolerated and in helping Iraq become a peaceable nation that offers no haven to terrorists? We would say the latter, while acknowledging the magnitude of the challenge, both during and especially after any war that may have to be fought. And we would say also that not only terrible things are possible: To free the Iraqi people from the sadistic repression of Saddam Hussein, while not the primary goal of a war, would surely be a blessing.

Nor is it useful merely to repeat that war ''should only be a last resort,'' as the latest French-German-Russian resolution states, or that, as French President Jacques Chirac said Monday, Iraq must disarm ''because it represents a danger for the region and maybe the world . . . but we believe this disarmament must happen peacefully.'' Like everyone else, we hope it does happen peacefully. But if it does not—if Saddam Hussein refuses as he has for a dozen years—should that refusal be accommodated?

War in fact has rarely been the last resort for the United States. In very recent times, the nation could have allowed Saddam Hussein to swallow Kuwait. It could have allowed Slobodan Milosevic to expel 1 million refugees from Kosovo. In each case, the nation and its allies fought wars of choice. Even the 2001 campaign against Afghanistan was not a ''last resort,'' though it is now remembered as an inevitable war of self-defense. Many Americans argued that the Taliban had not attacked the United States and should not be attacked; that what was needed was police action against Osama bin Laden. We believed they were wrong and Mr. Bush was right, though he will be vindicated in history only if the United States and its allies stay focused on Afghanistan and its reconstruction.

So the real questions are whether every meaningful alternative has been exhausted, and if so whether war is wise as well as justified. The risks should not be minimized. Everyone agrees, for example, that the United States would be stronger before and during a war if joined by many allies, and even better positioned if backed by the United Nations. If waiting a month, or three months, would ensure such backing, the wait would be worthwhile.

But the history is not encouraging. The Security Council agreed unanimously in early November that Iraq was a danger; that inspectors could do no more than verify a voluntary disarmament; and that a failure to disarm would be considered a ''material breach.'' Now all agree that Saddam Hussein has not cooperated, and yet some countries balk at the consequences—as they have, time and again, since 1991. We have seen no evidence that an additional three months would be helpful. Nor does it strike us as serious to argue that the war should be fought if Mr. Chirac and German Chancellor Gerhard Schroeder agree, but not if they do not. If the war is that optional, it should not be fought, even if those leaders do agree; if it is essential to U.S. national security, their objections ultimately cannot be dispositive.

In 1998 Mr. Clinton explained to the nation why U.S. national security was, in fact, in danger. ''What if he fails to comply and we fail to act, or we take some ambiguous third route, which gives him yet more opportunities to develop this program of weapons of mass destruction? . . . Well, he will conclude that the international community has lost its will. He will then conclude that he can go right on and do more to rebuild an arsenal of devastating destruction. And some day, some way, I guarantee you he'll use the arsenal.''

Some argue now that, because Saddam Hussein has not in the intervening half-decade used his arsenal, Mr. Clinton was wrong and the world can rest assured that Iraq is adequately ''contained.'' Given what we know about how containment erodes over time; about Saddam Hussein's single-mindedness compared with the inattention and divisions of other nations; and about the ease with which deadly weapons can move across borders, we do not trust such an assurance. Mr. Clinton understood, as Mr. Bush understands, that no president can bet his nation's safety on the hope that Iraq is ''contained.'' We respect our readers who believe that war is the worst option. But we believe that, in this case, long-term peace will be better served by strength than by concessions.

Mrs. CLINTON. Mr. President, for thousands of mothers across the U.S., having a child is a momentous occasion filled with happiness and excitement. However, for a smaller percentage of women, childbirth brings about feelings of sadness, fear, and anxiety so overwhelming that they can no longer function normally. Postpartum depression, a mood disorder that is the culprit of these sentiments, severely affects the mental health of new mothers and places a strain on families. This is why I am proud to join my colleagues, Senator DURBIN and Senator FITZGERALD, in introducing the ''Melanie Stokes Postpartum Depression Research and Care Act.''

I firmly believe that postpartum depression is a national problem; it strikes women regardless of age, race, or economic status. Nearly 80 percent of new mothers experience baby blues, a very common, mild form of depression occurring in the first days or weeks after birth, but 10 to 20 percent suffer from the more severe postpartum depression. This is accompanied by irritability, despair, and anger, which can continue without treatment. The most acute form of depression, postpartum psychosis, can be accompanied by anxiety and fear, but also delusions and hallucinations. It strikes 1 in 1000 women. These two forms of postpartum depression contribute to a mother's sense of worth, inhibits a women's ability to complete her every day activities or enjoy the precious new moments with her child.

Despite these serious effects, there is alarmingly little research on postpartum depression. Additionally, while drops in hormone levels such as progesterone and estrogen have been linked to postpartum mood swings, there is no definite known cause for this disorder. This bill seeks to fill a glaring void in the understanding of this illness and provide treatment and care options for new moms. It establishes research programs to explore the causes, prevention, and prevalence of postpartum depression and psychosis. I also believe that women need real support in terms of comprehensive services at the community level. This legislation provides grants to help moms manage postpartum conditions at hospitals, community health centers, and shelters so they can access home based care, screening services, and other comprehensive treatments.

Motherhood should be a blessing, not a nightmare. Organizations and health professionals all urge families and friends to inundate at risk or new moms with support as she takes on the complex task of raising a child. This bill is our way of supporting these moms. We hope to provide research results and necessary help to ensure a brighter future for new mothers caught in the fearful grip of postpartum depression. I will continue to support efforts to diminish the anguish of postpartum depression and improve efforts to safeguard the mental well-being for new mothers.

Mrs. FEINSTEIN. Mr. President, last night I introduced the ''State Criminal Alien Assistance Program Reauthorization Act of 2003,'' bipartisan legislation to authorize funds to relieve State and county governments of the some of the fiscal burdens associated with the incarceration of undocumented criminal aliens.

I am pleased that Senators MCCAIN, KYL, SCHUMER, BOXER, HUTCHISON, BINGAMAN and DOMENICI have joined me in introducing this important measure.

The broad principle on which this bill is based is simple: the control of illegal immigration is a Federal responsibility. When the Federal Government falls short in its efforts to control illegal immigration, it must bear the responsibility for the financial and human consequences of this failure.

More and more, however, the fiscal consequences of illegal immigration are being borne by the States and local counties.

The State Criminal Alien Assistant Program, SCAAP, Reauthorization Act of 2003 would properly vest the fiscal burden of incarcerating illegal immigrants, who are convicted of felonies or multiple misdemeanors, with the Federal Government.

The legislation would do so by authorizing up to $750 million in Fiscal Year 2004 for Federal reimbursement to the States and county governments for the direct costs associated with incarcerating undocumented criminal aliens. It would authorize an additional $850 million in Fiscal Year 2005, and $950 million for the program in Fiscal Years 2006 through 2010.

The number of State and local governments seeking SCAAP funding has jumped 25 percent from the previous year. The combination of the increase, and the fact that all 50 States and the District of Columbia receive some funding from the program, suggests that no State is immune from the fiscal costs associated with crimes committed by illegal aliens.

Therefore, I urge all of my colleagues to work with me to not only ensure that the SCAAP program survives, but also that it is adequately funded.

At a time when the administration is asking State and local governments to do even more with their local funds to enforce the nation's immigration laws, it is at the same time recommending the elimination of a vital source of funding that already falls far short of what states spend to incarcerate criminal illegal aliens.

High impact States, like California, continue to shoulder extraordinary costs for housing illegal aliens in its criminal justice system. The State prisons had an estimated 22,565 criminal aliens it its system out of a total population of 160,728.

In just a 3-month period last year, the State's county jails housed just under 10,000 criminal aliens. Overall, California taxpayers paid more than $2.28 billion in 2001 to cover these costs.

In 2002, California received a SCAAP payment of $220 million—less than 10 percent of the total costs to the State. This year, California taxpayers can expect to spend even more.

The SCAAP reauthorization bill would help California and all other States that are experiencing increasing costs from incarcerating undocumented felons—both low-impact and high-impact states.

Last year, the State of Wisconsin and its counties, for example, received more than $3.5 million in funding; Massachusetts received over $13 million; Pennsylvania received lose over $2.6 million; Virginia received more than $6.4 million; North Carolina received $5.2 million; Michigan received $2.9 million; Minnesota received $1.8 million.

Thus, even states that have not traditionally had to confront the growth in illegal immigration are now bearing the costs of this Federal responsibility.

The administration's opposition to this program is puzzling.

I am particularly disappointed that an Administration headed by a former governor of a State highly impacted by the Federal Government's inability to control illegal immigration, would recommend the elimination of this important program.

Who pays when these costs go uncovered?

In California, the burden will fall on our law enforcement agencies—including sheriffs, officers on the beat, antigang violence units, district attorneys offices. At a time when the nation is focused on enhancing security within our borders, within our States and within our local communities, a vital program like SCAAP should not be vulnerable to being short-changed or eliminated.

I note that when the current president was governor of Texas, he was a strong supporter of Federal funding for SCAAP he, too, recognized that controlling illegal immigration was a federal responsibility and that States cannot and should not be expected to handle the national burden on their own.

Certainly, the problems that were faced by Texas then with respect to the incarceration of criminal aliens have grown since then-Governor Bush wrote that letter. In 1997, the year in which the letter was written, the State of Texas incurred more than $129 million in incarceration costs. In fiscal year 2002, those costs soared to more than $1.17 billion.

It is inexplicable to me that this administration would now call for the elimination for the program. I will include the letter then-Governor Bush wrote to Representative Hal Rogers, chairman of the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, for the RECORD.

After years of strongly supporting funding for the SCAAP program, President Bush's recent opposition to the program prompted Congress to cut the program by 56 percent this year, from $565 million to $250 million.

I urge my colleagues to reverse that course in Fiscal Year 2004 and consider restoring the cuts that were made when Congress considers the FY2003 supplemental appropriations request the administration is likely to submit in the next several weeks.

I thank my colleagues who joined me yesterday for their tireless efforts in ensuring that States and local counties receive some compensation for they do their part in securing their communities from criminal aliens who are in the country illegally.

I join them in introducing the SCAAP reauthorization legislation in hopes that it will go further to alleviate some of the fiscal hardships States and local governments incur when they must take on this Federal responsibility.

I ask unanimous consent to print the letter to which I referred in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATE OF TEXAS
OFFICE OF THE GOVERNOR,
July 10, 1997.

Hon. HAL ROGERS,
Chairman, Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, Committee on Appropriations, Washington, D.C. 20515.

DEAR CHAIRMAN ROGERS: The cost of processing and housing criminal aliens in our state criminal justice system continues to grow. I am writing to ask you to support funding the $650 million authorization to reimburse state and local governments for the costs of incarcerating undocumented criminal aliens. We are thankful for Congress' recognition of this problem in Texas and appreciate the funding we have already received.

The Immigration and Naturalization Service estimates that Texas incarcerates more than 8,000 undocumented aliens each year. At this current rate of incarceration, the annual cost to Texas exceeds $129 million. During fiscal year 1996, Texas received $51.9 million in reimbursement under the State Criminal Alien Assistance Program (SCAAP). Any additional funds dedicated to assist Texas in recapturing the costs of housing these criminal aliens would be greatly appreciated.

Thank you for your time and attention to this matter of importance to Texas. I will appreciate any action you can take on this matter.

Sincerely,

GEORGE W. BUSH,
Governor.

TRIBUTE TO VICTOR BAIRD

Mrs. LINCOLN. Mr. President, I rise today to pay tribute to Victor Baird, who is retiring from his position as acting staff director and chief counsel to the U.S. Senate Select Committee on Ethics after more than 15 years of service.

For the last 2 years, I have had the privilege to serve on the U.S. Senate Select Committee on Ethics, an assignment that has provided me valuable insights into the workings and the ethical guidelines of this body. When I joined the committee, I was a relatively junior member, having served only 2 years in the Senate. I consider myself extremely fortunate that during this time, I have been able to draw on the wisdom and expertise of Victor Baird.

Following a distinguished legal career in Georgia, Victor came to Washington in 1987 to serve as counsel to the Ethics Committee. Over the ensuing 15 years, Victor has brought to the committee a sense of nonpartisan balance, careful legal judgment, historical perspective, and good humor—a collection of qualities that have served the committee well during some challenging times. His advice to committee members and his leadership of the committee staff have been invaluable during the last 15 years, and we owe him a debt of gratitude for his service.

I should note that, although the committee is losing a valuable asset in Victor Baird, we are fortunate in the choice of his successor—Rob Walker. Mr. Walker has served the past 4 years as chief counsel and staff director of the U.S. House of Representatives Committee on Standards of Official Conduct. But prior to that, he served as counsel to the Senate Ethics Committee, where he worked closely with Victor Baird. The Senate Ethics Committee is fortunate to have Rob back. I look forward to working with him, as I am sure that he will continue the tradition of fairness and excellence that his predecessor has established.

So as we say goodbye to Victor Baird, let's also thank him for his steady and dependable service in the committee for these last 15 years, and let's wish him well in his ventures in the years to come.

WAR ON TERROR AND HUMAN RIGHTS IN CHINA

Mr. FEINGOLD. Mr. President, attention is understandably on Iraq this week as we move ever closer to a decision on use of military force there to disarm the regime of Saddam Hussein. But as we contemplate whether such action makes sense in terms of protecting our people from the threat of global terrorism, it is important that we not lose sight of important developments in other parts of the world.

Earlier this week, Secretary of State Powell visited Beijing, reportedly to seek the support of China's leaders in dealing with Iraq and North Korea. This makes sense, since China has the power to veto any U.N. resolution on Iraq and is reputed to have influence

with Kim Jong-Il. Our relations with China have warmed since September 11, as its support was deemed important to the success of the ''war on terrorism,'' both in Afghanistan and beyond. Unfortunately, China's leaders appear to have a very different agenda for this war. As the Chinese would say, we are sleeping in the same bed but having different dreams.

Earlier this month, Wang Bingzhang, a Chinese democracy activist who has lived most of the past 20 years in New York as a U.S. legal permanent resident, was sentenced to life in prison following a secret trial on charges of espionage and ''leading a violent terrorist organization.'' Chinese authorities had had him in custody, unbeknownst to his family, since last July, when he was apparently abducted while visiting Vietnam and brought across the border into China. The Chinese authorities have presented no public evidence linking Wang to any violent activities. Since being exiled to Canada in 1979, however, he has advocated peaceful democratic change in China, founding the magazine China Spring in New York in 1982 and serving as an adviser to the outlawed China Democracy Party. He sneaked across the border into China in 1998, when the China Democracy Party was attempting to organize and register itself within the boundaries of Chinese law, and was detained and deported. The Chinese Communists clearly see him as a nuisance, and the ''war on terrorism'' provided a convenient excuse to silence him.

Last month, Chinese authorities executed a former Tibetan monk, Lobsang Dhondrup, who was accused of carrying out a series of bombings in Sichuan Province. Lobsang was detained near the scene of one of the bombings last April. But the only evidence made public against him was his confession, which was very likely extracted through torture. He was killed immediately after the Intermediate Court for the Ganzi Tibetan Prefecture upheld his death sentence. The same day, the Sichuan Provincial High Court in Chengdu rejected the appeal of Tenzin Delek Ripoche, a senior Tibetan Buddhist monk and social and environmental activist, and reaffirmed his suspended death sentence in connection with the same case. Chinese authorities have provided no public evidence linking Tenzin to the bombings, according to Human Rights Watch.

A third man, Tsereng Dhondrup, was given 5 years for merely circulating petitions in defense of Lobsang and Tenzin. Authorities are thought to be holding 10 other ethnic Tibetans in connection with the bombings but will not release their names or locations.

Mr. President, I do not dispute for a moment that Chinese authorities have the right—indeed the duty—to take firm measures against terrorism within their borders, just as we are doing here. The bombings in Sichuan, which took innocent life, were without question terrorist acts, as were the bombings this week on Beijing university campuses, and they should be condemned. The imperative to combat terrorism does not absolve any nation, however, of its obligation to respect basic human rights, including the right to due process. Whether Lobsang was involved in the bombings in Sichuan we may never know. But Assistant Secretary of State Lorne Craner has expressed ''deep concern'' as to whether Lobsong received a fair trial, according to the Washington Post. Neither Lobsang nor Tenzin was allowed to choose his own defense attorney. Tenzin was held incommunicado for 8 months, up to the day of his trial, and appeal hearings were closed to the public on the grounds that ''state secrets'' were involved.

These cases illustrate a deeply cynical misappropriation of the anti-terrorist struggle by a repressive regime to suppress legitimate dissent, persecute restive minority groups, and literally get away with murder. Administration officials maintain that, while seeking China's cooperation in combatting international terrorism, they have at the same time made clear that China should not interpret that as a license to violate basic human rights. But violate them they have, and apparently with increasing frequency.

In the Northeast Chinese Rustbelt city Liaoyang, two labor leaders—Yao Fuxin and Xiao Yunliang—are awaiting sentencing following their January 15 trial for ''inciting the subversion of the political authority of the state.'' The prosecution said they conspired to ''overthrow the socialist system.'' In fact, what they did was organize protest marches last spring for workers laid off from a state-owned plant that went bankrupt in 2001, owing them several months of back wages, as well as pension and other benefits and severance allowances. Workers suspected the plant's management had embezzled funds that should have been used to pay those benefits. The authorities declared the protests illegal and arrested Yao, Xiao, and two other organizers.

According to labor activists in Hong Kong who have been monitoring the case, Yao and Xiao were held for several months without formal charges and were denied access to their lawyer on the grounds that the case involved ''state secrets.'' The initial indication was that they had been arrested for illegal assembly. But when the workers of Liaoyang continued to rally behind their leaders and the case attracted international attention, Chinese authorities asserted that the men had carried out ''destructive activities,'' including car-bombings and destroying public property.

This was something not even the Liaoyang police and prosecutors had alleged. Even the local representative of the official Communist Party labor organization called the allegations ''a complete fabrication.'' Nonetheless, when formal charges were finally announced against the men last month, they were charged not just with illegal assembly but with the much more serious offense of subversion. At their four-hour trial January 15, the prosecution made no attempt to tie Yao and Xiao to any violent activities. Instead, they argued, Yao and Xiao had subverted the authority of the Chinese state by attending preparatory meetings of the then not-yet-banned China Democracy Party back in 1998 and communicating with ''hostile foreign elements,'' such as Agence France Presse and the Wall Street Journal.

Here again, China's rulers have appropriated the language of anti-terrorism to persecute people who have done nothing more than challenge the authority of the Communist Party through peaceful means.

Meanwhile, throughout China, the brutal suppression of the Falungong spiritual movement, which President Jiang Zemin has branded an ''evil cult,'' continues. Charles Li, a U.S. citizen Falungong practitioner, is about to enter his sixth week of detention in Jiangsu Province, where he returned to spend Chinese New Year with his parents.

Authorities have not charged him, and he has been allowed only one half-hour meeting with U.S. consular officials. Initial reports indicated he was accused of hijacking television broadcasts to spread the banned Falungong message. But his friends and associates maintain he was not even in China when those incidents occurred. His actual sin appears to be having had the temerity to serve a subpoena on the Mayor of Beijing, when he visited San Francisco last year, under the Alien Tort Claims Act and Torture Victim Protection Act, as was his right as a U.S. citizen on U.S. territory under U.S. law.

Why is it that we are seeing so many egregious violations of basic human rights in China in such a short span of time? Could it be that the senior leadership in Beijing knows that the world's attention is currently focused elsewhere? Could it be they think U.S. criticism of their actions will be muted, since the administration needs their support, or at least their acquiescence, on Iraq and North Korea? Or could it be that President Jiang and his cohorts, who will step down next month, want to clear the dockets so that Hu Jintao and the new crew can begin with a clean slate? Remember that Jiang rode to power on the tide of blood from Tiananmen Square, and he has snuffed out anything that even smelled of political reform ever since.

I hope China's incoming leaders, by virtue of their shared generational experience, will adopt a more enlightened view toward political modernization than their predecessors did. They are less likely to do so if they infer that the rest of the world is not paying attention or doesn't care. We must keep the disinfectant of sunlight focused on them, and anyone else who would deny people their basic freedoms and

dignities in the name of ''stability,'' ''security'' or the ''war on terror.''

Thank you, Mr. President.

DESIGNATING HUMAN GENOME MONTH AND DNA DAY

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Con. Res. 10 which was introduced today by Senators GREGG and KENNEDY.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 10) designating April 2003 as ''Human Genome Month'' and April 25 as ''DNA Day.''

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 10) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 10

Whereas April 25, 2003, will mark the 50th anniversary of the description of the double-helix structure of DNA by James D. Watson and Francis H.C. Crick, considered by many to be one of the most significant scientific discoveries of the 20th Century;

Whereas, in April 2003, the International Human Genome Sequencing Consortium will place the essentially completed sequence of the human genome in public databases, and thereby complete all of the original goals of the Human Genome Project;

Whereas, in April 2003, the National Human Genome Research Institute of the National Institutes of Health in the Department of Health and Human Services will unveil a new plan for the future of genomics research;

Whereas, April 2003 marks 50 years of DNA discovery during which scientists in the United States and many other countries, fueled by curiosity and armed with ingenuity, have unraveled the mysteries of human heredity and deciphered the genetic code linking one generation to the next;

Whereas, an understanding of DNA and the human genome has already fueled remarkable scientific, medical, and economic advances; and

Whereas, an understanding of DNA and the human genome hold great promise to improve the health and well being of all Americans: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress—

(1) designates April 2003 as ''Human Genome Month'' in order to recognize and celebrate the 50th anniversary of the outstanding accomplishment of describing the structure of DNA, the essential completion of the sequence of the human genome, and the development of a plan for the future of genomics;

(2) designates April 25 as ''DNA Day'' in celebration of the 50th anniversary of the publication of the description of the structure of DNA on April 25, 1953; and

(3) recommends that schools, museums, cultural organizations, and other educational institutions across the nation recognize Human Genome Month and DNA Day and carry out appropriate activities centered on human genomics, using information and materials provided through the National Human Genome Research Institute and through other entities.

RECOGNIZING BICENTENNIAL OF OHIO'S FOUNDING

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 68 which was introduced earlier today by Senators VOINOVICH and DEWINE.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 68) recognizing the bicentennial of Ohio's founding.

There being no objection, the Senate proceeded to consider the resolution.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 68) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 68

Whereas Ohio residents will celebrate 2003 as the 200th anniversary of Ohio's founding:

Whereas Ohio was the 17th State to be admitted to the Union and was the first to be created from the Northwest Territory;

Whereas the name ''Ohio'' is derived from the Iroquois word meaning ''great river'', referring to the Ohio River which forms the southern and eastern boundaries;

Whereas Ohio was the site of battles of the American Indian Wars, French and Indian Wars, Revolutionary War, the War of 1812, and the Civil War;

Whereas in the nineteenth century, Ohio, a free State, was an important stop on the Underground Railroad as a destination for more than 100,000 individuals escaping slavery and seeking freedom;

Whereas Ohio, ''The Mother of Presidents'', has given eight United States presidents to the Nation, including William Henry Harrison, Ulysses S. Grant, Rutherford B. Hayes, James A. Garfield, Benjamin Harrison, William McKinley, William H. Taft, and Warren G. Harding;

Whereas Ohio inventors, including Thomas Edison (incandescent light bulb), Orville and Wilbur Wright (first in flight), Henry Timken (roller bearings), Charles Kettering (automobile starter), Charles Goodyear (process of vulcanizing rubber), Garrett Morgan (traffic light), and Roy Plunkett (Teflon) created the basis for modern living as we know it;

Whereas Ohio, ''The Birthplace of Aviation'', has been home to 24 astronauts, including John Glenn, Neil Armstrong, and Judith Resnick;

Whereas Ohio has a rich sports tradition and has produced many sports legends, including Annie Oakley, Jesse Owens, Cy Young, Jack Nicklaus, and Nancy Lopez;

Whereas Ohio has produced many distinguished writers, including Harriet Beecher Stowe, Paul Laurence Dunbar, Toni Morrison, and James Thurber;

Whereas the agriculture and agribusiness industry is and has long been the number one industry in Ohio, contributing $73,000,000,000 annually to Ohio's economy and employing 1 in 6 Ohioans, and that industry's tens of thousands of Ohio farmers and 14,000,000 acres of Ohio farmland feed the people of the State, the Nation, and the world;

Whereas the enduring manufacturing economy of Ohio is responsible for ¼ of Ohio's Gross State Product, provides over one million well-paying jobs to Ohioans, exports $26,000,000,000 in products to 196 countries, and provides over $1,000,000,000 in tax revenues to local schools and governments;

Whereas Ohio is home to over 140 colleges and universities which have made significant contributions to the intellectual life of the State and Nation, and continued investment in education is Ohio's promise to future economic development in the ''knowledge economy'' of the 21st century;

Whereas, from its inception, Ohio has been a prime destination for people from all corners of the world, and the rich cultural and ethnic heritage that has been interwoven into the spirit of the people of Ohio and that enriches Ohio's communities and the quality of life of its residents is both a tribute to, and representative of, the Nation's diversity;

Whereas Ohio will begin celebrations commemorating its bicentennial on March 1, 2003, in Chillicothe, the first capital of Ohio;

Whereas the bicentennial celebrations will include Inventing Flight in Dayton (celebrating the centennial of flight), Tall Ships on Lake Erie, Tall Stacks on the Ohio River, Red, White, and Bicentennial Boom in Columbus, and the Bicentennial Wagon Train across the State: Now, therefore, be it

Resolved by the Senate That the Senate

(1) recognizes the bicentennial of Ohio's founding and its residents for their important contributions to the economic, social, and cultural development of the United States; and

(2) directs the Secretary of the Senate to transmit a copy of this resolution to the Governor of Ohio.

READ ACROSS AMERICA DAY

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 69 which was introduced earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 69) designating March 3, 2003, as ''Read Across America Day.''

There being no objection, the Senate proceeded to consider the resolution.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and any statements relating to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 69) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 69

Whereas reading is a basic requirement for quality education and professional success, and a source of pleasure throughout life;

Whereas Americans must be able to read if the Nation is to remain competitive in the global economy;

Whereas Congress, through the No Child Left Behind Act of 2001 (Public Law 107–110) and the new Reading First, Early Reading First, and Improving Literacy Through School Libraries programs, has placed great emphasis on reading intervention and additional resources for reading assistance; and

Whereas more than 40 national associations concerned about reading and education have joined with the National Education Association to use March 2, the anniversary of the birth of Theodor Geisel, also known as Dr. Seuss, to celebrate reading: Now, therefore, be it

Resolved, That the Senate—

(1) designates March 3, 2003, as ''Read Across America Day'';

(2) honors Theodor Geisel, also known as Dr. Seuss, for his success in encouraging children to discover the joy of reading;

(3) encourages parents to read with their children for at least 30 minutes on Read Across America Day in honor of Dr. Seuss and in a celebration of reading; and

(4) requests that the President issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

MEASURE READ THE FIRST TIME—H.R. 534

Mr. SANTORUM. Mr. President, I understand that H.R. 534 is at the desk. I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 534) to amend title 18, United States Code, to prohibit human cloning.

Mr. SANTORUM. Mr. President, I ask for its second reading and object to my own request.

The PRESIDING OFFICER. Objection having been heard, the bill will be read a second time on the next legislative day.

ORDERS FOR MONDAY, MARCH 3, 2003

Mr. SANTORUM. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 noon, Monday, March 3. I further ask unanimous consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate return to executive session and resume consideration of the nomination of Miguel Estrada to be Circuit Court judge for the District of Columbia.

Mr. REID. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. SANTORUM. For the information of all Senators, the Senate will resume consideration of the Estrada nomination during Monday's session. As a reminder, the next rollcall vote will occur at 5:30 p.m. on Monday, as under the previous order. That vote will be on the confirmation of a U.S. Court of Federal Claims Judge. Once again, Members are encouraged to come to the floor during Monday's session in order to debate the pending Estrada nomination.

ADJOURNMENT UNTIL MONDAY, MARCH 3, 2003

Mr. SANTORUM. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:54 p.m., adjourned until Monday, March 3, 2003, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate February 27, 2003:

DEPARTMENT OF STATE

JAMES B. FOLEY, OF NEW YORK, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF HAITI.

UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY

JAY T. SNYDER, OF NEW YORK, TO BE A MEMBER OF THE UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 2004, VICE PAULA DOBRIANSKY, TERM EXPIRED.

HAROLD C. PACHIOS, OF MAINE, TO BE A MEMBER OF THE UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 2005. (REAPPOINTMENT)

ELIZABETH F. BAGLEY, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 2005, VICE LEWIS MANILOW, RESIGNED.

MARIE SOPHIA AGUIRRE, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 2003, VICE MARIA ELENA TORANO, TERM EXPIRED.

MARIE SOPHIA AGUIRRE, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 2006. (REAPPOINTMENT)

BARBARA MCCONNELL BARRETT, OF ARIZONA, TO BE A MEMBER OF THE UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 2003, VICE HANK BROWN, RESIGNED.

BARBARA MCCONNELL BARRETT, OF ARIZONA, TO BE A MEMBER OF THE UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 2006. (REAPPOINTMENT)

CHARLES WILLIAM EVERS III, OF FLORIDA, TO BE A MEMBER OF THE UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 2003, VICE CHARLES H. DOLAN, JR., TERM EXPIRED.

CHARLES WILLIAM EVERS III, OF FLORIDA, TO BE A MEMBER OF THE UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING ON JULY 1, 2006. (REAPPOINTMENT)

AFRICAN DEVELOPMENT FOUNDATION

EPHRAIM BATAMBUZE, OF ILLINOIS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE AFRICAN DEVELOPMENT FOUNDATION FOR A TERM EXPIRING FEBRUARY 9, 2008, VICE HENRY MCKOY, TERM EXPIRED.

THOMAS THOMAS RILEY, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE AFRICAN DEVELOPMENT FOUNDATION FOR THE REMAINDER OF THE TERM EXPIRING SEPTEMBER 22, 2005, VICE CLAUDE A. ALLEN.

DEPARTMENT OF JUSTICE

MCGREGOR WILLIAM SCOTT, OF CALIFORNIA, TO BE UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF CALIFORNIA FOR THE TERM OF FOUR YEARS, VICE PAUL L. SEAVE, RESIGNED.

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601, AND TO BE A SENIOR MEMBER OF THE MILITARY STAFF COMMITTEE OF THE UNITED NATIONS UNDER TITLE 10, U.S.C., SECTION 711:

To be lieutenant general

MAJ. GEN. WALTER L. SHARP, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. ANN D. GILBRIDE, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. RICHARD J. WALLACE, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. JON W. BAYLESS JR., 0000
CAPT. JAY A. DELOACH, 0000
CAPT. EDWARD NMN MASSO, 0000
CAPT. WILLIAM H. PAYNE, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. HAROLD L. ROBINSON, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. HENRY B. TOMLIN III, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. KAREN A. FLAHERTY, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. MARSHALL E. CUSIC JR., 0000